13. FOREIGN POLICY AND NATIONAL DEFENCE

13.1. FOREIGN POLICY

On the legal force of international and EU law in the legal system of Lithuania, see 1. The foundations of the constitutional order, 1.8. The foundations of lawmaking and of the application of law, 1.8.4. The hierarchy of legal acts, 1.8.4.3. International and EU law.

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

The Constitutional Court's ruling of 9 December 1998

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

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

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

The Republic of Lithuania observes the international obligations undertaken by it and respects the universally recognised principles of international law (Paragraph 1 of Article 135 and Paragraph 3 of Article 138 of the Constitution)

The Constitutional Court's ruling of 14 March 2006

… the observance of international obligations undertaken of its own free will and respect for the universally recognised principles of international law (as well as the principle of *pacta sunt servanda*) are a legal tradition and a constitutional principle of the restored independent State of Lithuania.

[…]

… the principle consolidated in the Constitution that the Republic of Lithuania observes international obligations undertaken of its own free will and respects the universally recognised principles of international law implies that, in cases where national legal acts (*inter alia*, laws or constitutional laws) establish such a legal regulation that competes with the one established in an international treaty, the international treaty is to be applied.

The constitutional foundations of international cooperation carried out by the state; the geopolitical orientation of the state (on international cooperation on military matters, see 13.2. National defence; the ruling of 15 March 2011)

The Constitutional Court's ruling of 15 March 2011

The general constitutional foundations for international cooperation carried out by the state where such cooperation is related, *inter alia*, to national defence are consolidated in various provisions of the Constitution.

Paragraph 1 of Article 135 of the Constitution provides that, in implementing its foreign policy, the Republic of Lithuania follows the universally recognised principles and norms of international law, seeks to ensure national security and independence, the welfare of its citizens, and their basic rights and freedoms, and contributes to the creation of the international order based on law and justice (Paragraph 1); in the Republic of Lithuania, war propaganda is prohibited (Paragraph 2).

Article 136 of the Constitution states that the Republic of Lithuania participates in international organisations provided that this is not in conflict with the interests and independence of the state.

Article 138 of the Constitution provides that the Seimas ratifies or denounces the following international treaties of the Republic of Lithuania: (1) on the alteration of the boundaries of the State of the Republic of Lithuania; (2) on political cooperation with foreign states; mutual assistance treaties; as well as treaties of a defensive nature related to the defence of the state; (3) on the renunciation of the use of force or threatening by force; as well as peace treaties; (4) on the presence and status of the armed forces of the Republic of Lithuania on the territories of foreign states; (5) on the participation of the Republic of Lithuania in universal international organisations and regional international organisations; (6) multilateral or long-term economic treaties (Paragraph 1); the same article provides that laws, as well as international treaties, may also provide for other cases when the Seimas ratifies international treaties of the Republic of Lithuania (Paragraph 2); and that international treaties ratified by the Seimas of the Republic of Lithuania are a constituent part of the legal system of the Republic of Lithuania (Paragraph 3).

The Constitutional Act on Membership of the Republic of Lithuania in the European Union, which was adopted while "seeking to ensure the fully fledged participation of the Republic of Lithuania in the European integration, as well as the security of the Republic of Lithuania and welfare of its citizens" (Preamble), provides, *inter alia*, that the Republic of Lithuania as a Member State of the European Union shares with or confers on the European Union the competences of its state institutions in the areas provided for in the founding Treaties of the European Union and to the extent it would, together with the other Member States of the European Union, jointly meet its membership commitments in those areas, as well as enjoy membership rights (Paragraph 1); the norms of European Union law are a constituent part of the legal system of the Republic of Lithuania; where it concerns the founding Treaties of the European Union, the norms of European Union law are applied directly, while in the event of the collision of legal norms, they have supremacy over the laws and other legal acts of the Republic of Lithuania (Article 2).

Thus, the general constitutionally consolidated foundations for international cooperation carried out by the state where such cooperation is related, *inter alia*, to the defence of the state are characterised, *inter alia*, by the consolidation of the geopolitical orientation of the State of Lithuania – the participation of the state in European integration as a Member of the European Union and the striving of the state to ensure national independence and security by contributing to the creation of the international order based on law and justice.

… the geopolitical orientation of the State of Lithuania – the participation of the state in European integration – is inseparable from other international obligations of the Republic of Lithuania arising from the membership of Lithuania in other international organisations, *inter alia*, the United Nations and the North Atlantic Treaty Organisation; this membership provides Lithuania not only with additional security guarantees, but also implies the necessity to observe the international obligations undertaken by it.

… the power of the Seimas, which is consolidated in Paragraph 1 of Article 142 of the Constitution, to adopt the decision to use the armed forces when the need arises to defend the Homeland or to fulfil the international obligations of the State of Lithuania also includes such a decision to use the armed forces when it is necessary to fulfil the international obligations of the Republic of Lithuania under international treaties of the Republic of Lithuania.

The geopolitical orientation of the state

The Constitutional Court's ruling of 24 January 2014

… the fundamental constitutional values consolidated in Article 1 of the Constitution – the independence of the state, democracy, the republic – are closely interrelated with the geopolitical orientation

of the State of Lithuania, which is consolidated in the Constitution and implies European and transatlantic integration pursued by the Republic of Lithuania. As the Constitutional Court noted in its ruling of 7 July 2011, the geopolitical orientation of the State of Lithuania means the membership of the Republic of Lithuania in the EU and NATO, as well as the necessity to fulfil the respective international obligations related to the said membership. It should also be noted that such geopolitical orientation of the State of Lithuania is based upon the recognised and protected universal constitutional values that are common with the values of other European and North American states.

The geopolitical orientation of the State of Lithuania is expressed in the text of the Constitution both in the negative and positive aspects. The negative aspect of the geopolitical orientation of the State of Lithuania is expressed in the Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions, whereas the positive aspect is consolidated in the Constitutional Act on Membership of the Republic of Lithuania in the European Union. These constitutional acts are a constituent part of the Constitution.

Non-Alignment to Post-Soviet Eastern unions (Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions) as the negative aspect of the geopolitical orientation of the State of Lithuania

The Constitutional Court's ruling of 24 January 2014

The Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions lays down the limits that may not be overstepped by the Republic of Lithuania in the processes of its participation in international integration and consolidates the prohibition on joining any new political, military, economic, or other unions or commonwealths of states formed on the basis of the former USSR. It is clear from the preamble to this constitutional act that it was adopted by invoking "the 16 February 1918 and 11 March 1990 Acts on the Restoration of the Independent State of Lithuania and acting upon the will of the entire Nation, as expressed on 9 February 1991". Thus, the basis of the provisions of this constitutional act is the same fundamental principle of the state, which is based on the declaration of the sovereign will of the Nation and consolidated in Article 1 of the Constitutional Law on the State of Lithuania: i.e. the State of Lithuania is an independent democratic republic. Therefore, under the Constitution, the provisions of the Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions should enjoy the same protection as the provision "The State of Lithuania shall be an independent democratic republic", which is stipulated in Article 1 of the Constitution and Article 1 of the Constitutional Law on the State of Lithuania. In view of this, it needs to be held that, although Article 148 of the Constitution does not explicitly regulate the procedure for the alteration of the constituent parts of the Constitution, *inter alia*, the procedure for the alteration of the Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions, the requirement stems from the very essence of the provisions of the Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions to amend those provisions under the procedure that is the same for the alteration of the constitutional provision "The State of Lithuania shall be an independent democratic republic", i.e. under the same procedure as established in Article 2 of the Constitutional Law on the State of Lithuania.

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

Membership in the European Union (Constitutional Act on Membership of the Republic of Lithuania in the European Union) as the positive aspect of the geopolitical orientation of the State of

Lithuania (for more on the obligation of the Republic of Lithuania to participate in the integration of the member countries into the economic and monetary union by adopting the euro, see 11. The state budget and finances; 11.3. The Bank of Lithuania; the ruling of 24 January 2014)

The Constitutional Court's ruling of 24 January 2014

The membership of the Republic of Lithuania in the European Union was constitutionally confirmed by means of the Constitutional Act on Membership of the Republic of Lithuania in the European Union. The preamble to this Constitutional Act makes it clear that the Seimas adopted it in order to execute "the will of the citizens of the Republic of Lithuania, as expressed in the referendum on membership of the Republic of Lithuania in the European Union, held on 10–11 May 2003" and while "expressing its conviction that the European Union respects human rights and fundamental freedoms and that Lithuanian membership in the European Union will contribute to the more efficient securing of human rights and freedoms", "noting that the European Union respects the national identity and constitutional traditions of its Member States", and "seeking to ensure the fully fledged participation of the Republic of Lithuania in the European integration, as well as the security of the Republic of Lithuania and welfare of its citizens".

Thus, it needs to be emphasised that the full participation of the Republic of Lithuania, as a Member of the European Union, in the European Union is a constitutional imperative based on the expression of the sovereign will of the Nation and that the full membership of the Republic of Lithuania in the European Union is a constitutional value.

It should be noted that the Constitutional Act on Membership of the Republic of Lithuania in the European Union establishes, *inter alia*, the constitutional foundations of the membership of the Republic of Lithuania in the European Union. If such constitutional foundations were not consolidated in the Constitution, the Republic of Lithuania would be unable to be a full member of the European Union: the Republic of Lithuania as a Member State of the European Union shares with or confers on the European Union the competences of its state institutions in the areas provided for in the founding Treaties of the European Union and to the extent it would, together with the other Member States of the European Union, jointly meet its membership commitments in those areas, as well as enjoy membership rights (Article 1); the norms of European Union law are a constituent part of the legal system of the Republic of Lithuania; where it concerns the founding Treaties of the European Union, the norms of European Union law are applied directly, while in the event of the collision of legal norms, they have supremacy over the laws and other legal acts of the Republic of Lithuania (Article 2). It needs to be emphasised that these constitutional foundations of membership of the Republic of Lithuania in the European Union were consolidated in the Constitution so as to execute the will of the Nation that the Republic of Lithuania could be a member of the European Union.

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

It has been mentioned that the geopolitical orientation of the State of Lithuania means, *inter alia*, the membership of the Republic of Lithuania in the EU, as well as the necessity to fulfil the respective international obligations related to the said membership … amendments to the Constitution may not violate the harmony of the provisions of the Constitution or the harmony of the values consolidated by them. In view of this, it should be noted that, under the Constitution, as long as the aforesaid constitutional foundations for membership of the Republic of Lithuania in the European Union, which are consolidated in Articles 1 and 2 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union, have not been annulled by referendum, any amendments to the Constitution that would deny the obligations of the Republic of Lithuania arising from its membership in the European Union are not permitted.

[…]

It should be emphasised that the constitutional imperative of the full membership of the Republic of Lithuania in the European Union implies that the constitutional value is specifically full membership in the

European Union, i.e. fully fledged, rather than partial, participation in the activities of this Union and in the integration of its Member States.

[…]

… the constitutional imperative of the fully fledged participation of the Republic of Lithuania in the European Union and its full membership in the European Union, as a constitutional value, also implies the constitutional obligation of the Republic of Lithuania to participate, as a full Member State, *inter alia*, in the integration of the member countries into the economic and monetary union, *inter alia*, by adopting the common currency of this union – the euro – and conferring on the European Union the exclusive competence in the area of monetary policy. It should be noted that such a constitutional obligation of the State of Lithuania is concurrently an obligation arising from its membership in the European Union, which the State of Lithuania is obliged to fulfil while observing its geopolitical orientation consolidated in the Constitution and the constitutional principle of *pacta sunt servanda*.

The principle of respect for international law (Paragraph 1 of Article 135 of the Constitution)

The Constitutional Court's ruling of 24 January 2014

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

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

As the Constitutional Court has noted, the observance of international obligations undertaken of its own free will and respect for the universally recognised principles of international law (as well as the principle of *pacta sunt servanda*) are a legal tradition and a constitutional principle of the restored independent State of Lithuania (rulings of 14 March 2006 and 5 September 2012). It should be noted that respect for international law is an inseparable part of the constitutional principle of a state under the rule of law; the essence of the said principle is the rule of law.

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

The principle of respect for international law (Paragraph 1 of Article 135 of the Constitution)

The Constitutional Court's ruling of 18 March 2014

… As noted by the Constitutional Court in its ruling of 24 January 2014, under Paragraph 1 of Article 135 of the Constitution, the Republic of Lithuania is obliged to follow the universally recognised principles and norms of international law; the said provision consolidates the constitutional principle of respect for international law, i.e. the principle of *pacta sunt servanda*, which means the imperative of fulfilling in good faith the obligations assumed by the Republic of Lithuania under international law, *inter alia*, international treaties.

It should be noted that the constitutional principle of *pacta sunt servanda* also means the imperative of fulfilling in good faith the international obligations arising from the universally recognised norms of international law (general international law) that prohibit international crimes.

[…]

… It should be noted that respect for international law is an inseparable part of the constitutional principle of a state under the rule of law; the essence of the said principle is the rule of law (ruling of 24 January 2014).

In the context of the constitutional justice case at issue, it should be noted that, under Paragraph 1 of Article 135 of the Constitution and the constitutional principle of a state under the rule of law, the Republic of Lithuania is obliged to fulfil, in good faith, its international obligations arising under the universally recognised norms of international law (general international law), *inter alia*, under the *jus cogens* norms that prohibit international crimes and are consolidated, *inter alia*, in the international treaties of the Republic of Lithuania ratified by the Seimas, which, as stipulated in Paragraph 3 of Article 138 of the Constitution, are a constituent part of the legal system of the Republic of Lithuania.

[…]

In this context, it should be noted that, in its ruling of 9 December 1998, in interpreting Paragraph 1 of Article 135 of the Constitution, under which, in implementing its foreign policy, the Republic of Lithuania follows the universally recognised principles and norms of international law, seeks to ensure national security and independence, the welfare of its citizens, and their fundamental rights and freedoms, and contributes to the creation of the international order based on law and justice, as well as Paragraph 3 of Article 138, which stipulates that international treaties ratified by the Seimas of the Republic of Lithuania are a constituent part of the legal system of the Republic of Lithuania, the Constitutional Court held that the State of Lithuania, recognising the principles and norms of international law, may not apply substantially different standards to the people of this country; holding that it is a full member of the international community, the State of Lithuania, of its own free will, adopts and recognises these principles and norms, the customs of the international community, naturally integrates itself into the world culture, and becomes its natural part.

It has been mentioned that respect for international law is an inseparable part of the constitutional principle of a state under the rule of law; the essence of the said principle is the rule of law. As the Constitutional Court has mentioned on more than one occasion, this constitutional principle also embodies the striving for an open, just, and harmonious civil society and a state under the rule of law, as consolidated in the Preamble to the Constitution (rulings of 19 September 2002, 17 November 2003, and 13 December 2004). … respect for international law is also linked to the striving for an open, just, and harmonious civil society, which is expressed through the constitutional principle of a state under the rule of law and implies, *inter alia*, openness to universal democratic values and integration into the international community based on these values.

Thus, in the context of the constitutional justice case at issue, it should also be noted that, in order to be in line with the commitment of the Republic of Lithuania, as prescribed in Paragraph 1 of Article 135 of the Constitution, to fulfil, in good faith, its international obligations arising under the universally recognised norms of international law (general international law), *inter alia*, under the *jus cogens* norms that prohibit international crimes, the criminal laws of the Republic of Lithuania that are related to responsibility for international crimes, *inter alia*, genocide, may not establish any such standards that would be lower than those established under the universally recognised norms of international law. Disregard for the said requirement would be incompatible with the striving for an open, just, and harmonious civil society and a state under the rule of law, as consolidated in the Preamble to the Constitution and expressed through the constitutional principle of a state under the rule of law.

The constitutional foundations of international cooperation carried out by the State of Lithuania

The Constitutional Court's decision of 16 May 2016

… the provisions of the official constitutional doctrine that are related to the general constitutional foundations of international cooperation carried out by the State of Lithuania are as follows:

– the general constitutional foundations of international cooperation carried out by the state are consolidated in various provisions of the Constitution, *inter alia*, in Paragraph 1 of Article 135 thereof; the said paragraph states that, in implementing its foreign policy, the Republic of Lithuania follows the universally recognised principles and norms of international law, seeks to ensure national security and independence, the welfare of its citizens, and their basic rights and freedoms, and contributes to the creation of the international order based on law and justice; the aforementioned constitutional foundations are also consolidated in Article 136 of the Constitution, whereby the Republic of Lithuania participates in international organisations provided that this is not in conflict with the interests and independence of the state (ruling of 15 March 2011); under Paragraph 3 of Article 138 of the Constitution, international treaties ratified by the Seimas of the Republic of Lithuania are a constituent part of the legal system of the Republic of Lithuania; respect for international law, i.e. the observance of international obligations undertaken of its own free will, and respect for the universally recognised principles of international law (as well as the principle of *pacta sunt servanda*) are a legal tradition and a constitutional principle of the restored independent State of Lithuania (ruling of 14 March 2006);

– respect for international law is an inseparable part of the constitutional principle of a state under the rule of law; the essence of the said principle is the rule of law (rulings of 24 January 2014 and 18 March 2014); respect for international law is also linked to the striving for an open, just, and harmonious civil society, which is expressed through the constitutional principle of a state under the rule of law and implies, *inter alia*, openness to universal democratic values and integration into the international community based on these values (ruling of 18 March 2014);

– the general constitutionally consolidated foundations for international cooperation carried out by the state are characterised, *inter alia*, by the consolidation of the geopolitical orientation of the State of Lithuania (ruling of 15 March 2011); the geopolitical orientation of the State of Lithuania means the membership of the Republic of Lithuania in the EU and NATO, as well as the necessity to fulfil the respective international obligations related to the said membership (rulings of 24 January 2014 and 19 November 2015); such geopolitical orientation of the State of Lithuania is based upon the recognised and protected universal constitutional values that are common with the values of other European and North American states (ruling of 24 January 2014); the fully fledged participation of the Republic of Lithuania, as a member of the European Union, in the European Union is a constitutional imperative based on the expression of the sovereign will of the Nation; the full membership of the Republic of Lithuania in the European Union is a constitutional value (ruling of 24 January 2014).

… Paragraph 1 of Article 135 of the Constitution consolidates the foundations of international cooperation carried out by the Republic of Lithuania in order to implement the constitutional objectives of foreign policy to ensure national security and independence, the welfare of its citizens, and their fundamental rights and freedoms, and to contribute to the creation of the international order based on law and justice; when account is taken of the geopolitical orientation of the State of Lithuania, the aforementioned foundations of international cooperation imply such an activity performed by the State of Lithuania, by its institutions, and by individuals employed therein that is aimed at contributing to the partnership of other states with the European Union or with NATO, or at contributing to the integration of the said states into these international organisations by promoting the dissemination of universal and democratic values, as well as the principles of EU law, as, for instance, democracy, the rule of law, transparency, the independence of courts and judges, respect for human rights and fundamental freedoms, and, *inter alia*, the dissemination of the said values and principles in the spheres of the improvement of the systems of justice and the activity of courts.

The constitutional obligation of the Republic of Lithuania to properly implement the requirements of European Union law (Constitutional Act on Membership of the Republic of Lithuania in the European Union)

The Constitutional Court's decision of 20 December 2017

The Constitutional Court has held that full participation by the Republic of Lithuania, as a Member State, in the European Union is a constitutional imperative based on the expression of the sovereign will of the Nation; full membership of the Republic of Lithuania in the European Union is a constitutional value (rulings of 24 January 2014 and 19 November 2015 and the decision of 16 May 2016).

The Constitutional Court has noted that the Constitutional Act on Membership of the Republic of Lithuania in the European Union, *inter alia*, establishes the constitutional foundations for membership of the Republic of Lithuania in the European Union; if these constitutional foundations were not consolidated in the Constitution, the Republic of Lithuania could not be a full member of the European Union: the Republic of Lithuania, as a Member State of the European Union, shares with or confers on the European Union the competences of its state institutions in the areas provided for in the founding Treaties of the European Union and to the extent it would, together with the other Member States of the European Union, jointly meet its membership commitments in those areas, as well as enjoy membership rights (Article 1); the norms of European Union law are a constituent part of the legal system of the Republic of Lithuania (Article 2) (rulings of 24 January 2014 and 14 July 2014 and the decision of 20 October 2017). The Constitutional Court has noted on more than one occasion that the jurisprudence of the European Court of Human Rights, as a source of interpretation of law, is also important for the interpretation and application of Lithuanian law.

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

13.2. NATIONAL DEFENCE

The constitutional foundations of national defence (Paragraph 2 of Article 3 and Paragraph 1 of Article 139 of the Constitution)

The Constitutional Court's ruling of 24 September 2009

Paragraph 2 of Article 3 of the Constitution provides that the Nation and each citizen have the right to resist anyone who encroaches on the independence, territorial integrity, and constitutional order of the State of Lithuania by force.

Article 139 of the Constitution prescribes: the defence of the State of Lithuania against a foreign armed attack is the right and duty of each citizen of the Republic of Lithuania (Paragraph 1); the citizens of the Republic of Lithuania must perform military or alternative national defence service according to the procedure established by law (Paragraph 2).

[…]

The provisions of Articles 3 and 139 of the Constitution … consolidate the principles of the defence of the State of Lithuania, the defence of its independence and territorial integrity, the defence of the constitutional order and national defence, as well as the related rights and duties of citizens. These provisions of the Constitution are interrelated and, together with other provisions and principles of the Constitution, compose the integral system of the constitutional regulation of national defence; therefore, they must also be interpreted in a systemic manner, *inter alia*, in the context of the constitutional principle of a state under the rule of law.

As mentioned before, Paragraph 2 of Article 3 of the Constitution consolidates the right of each citizen to resist anyone who encroaches on the independence, territorial integrity, and constitutional order of the State of Lithuania by force.

In its ruling of 23 November 1999, the Constitutional Court held the following: "The constitutional order of the Republic of Lithuania is based on the priority of the rights and freedoms of individuals and citizens as the ultimate value, as well as on the principles establishing the sovereignty of the Nation, the independence and territorial integrity of the state, democracy, the republic as the form of government, the separation of powers, their independence and balance, local self-government, etc. The protection of the constitutional order means that it is not permitted that the social, economic, and political relationships established in the Constitution, which constitute the foundations of the life of individuals, society and the state, be encroached upon."

The Constitutional Court has held on more than one occasion that the state is the organisation of all society (rulings of 25 November 2002, 4 March 2003, 30 September 2003, 3 December 2003, and 30 December 2003). …

… there is a special legal link between the state and its citizens. … Citizenship determines the legal status of a person; the fact that a certain person holds citizenship constitutes the precondition for that person to exercise all rights and freedoms consolidated in the Constitution and laws, as well as to perform the established duties … Under the Constitution, only citizens of the Republic of Lithuania … have certain duties: the duty to defend the State of Lithuania against a foreign armed attack (Paragraph 1 of Article 139 of the Constitution) and the duty to perform military or alternative national defence service (Paragraph 2 of Article 139 of the Constitution).

The following constitutional provisions and principles are linked with national security, with the protection of sovereignty and the constitutional order, and with the national foreign and defence policy, *inter alia*: the Lithuanian Nation, having for centuries staunchly defended its freedom and independence, adopts and proclaims the Constitution (Preamble to the Constitution); the State of Lithuania is an independent democratic republic (Article 1); the State of Lithuania is created by the Nation; sovereignty belongs to the Nation (Article 2); no one may restrict or limit the sovereignty of the Nation or arrogate to himself/herself the sovereign powers belonging to the entire Nation (Paragraph 1 of Article 3); in implementing its foreign policy, the Republic of Lithuania follows the universally recognised principles and norms of international law, seeks to ensure national security and independence, the welfare of its citizens, and their basic rights and freedoms, and contributes to the creation of the international order based on law and justice (Paragraph 1 of Article 135); the Republic of Lithuania participates in international organisations provided that this is not in conflict with the interests and independence of the state (Article 136); there may not be any weapons of mass destruction and foreign military bases on the territory of the Republic of Lithuania (Article 137); the main issues of national defence are considered and coordinated by the State Defence Council, which consists of the President of the Republic, the Prime Minister, the Speaker of the Seimas, the Minister of National Defence, and the Commander of the Armed Forces (Paragraph 1 of Article 140); the Seimas shall impose martial law, announce mobilisation or demobilisation, or adopt the decision to use the armed forces when the need arises to defend the Homeland or to fulfil the international obligations of the State of Lithuania (Paragraph 1 of Article 142); in the event of an armed attack threatening the sovereignty of the State or its territorial integrity, the President of the Republic immediately adopts a decision on defence against the armed aggression, imposes martial law throughout the state or in its separate part, or announces mobilisation, and submits these decisions for approval at the next sitting of the Seimas, or immediately convenes an extraordinary session in the period between sessions of the Seimas (Paragraph 2 of Article 142); the state takes care of and provides for servicemen who lose their health during military service, as well as for the families of servicemen who lose their lives or die during military service (Paragraph 1 of Article 146); the state provides for citizens who lose their health while defending the state, as well as for the families of citizens who lose their lives or die in defence of the state (Paragraph 2 of Article 146); all these constitutional provisions and principles imply the conclusion that the independence of the state, its territorial integrity, and its constitutional order are among the most important constitutional values, the protection of which is the priority obligation of the state authorities and all citizens. Ensuring the performance of this duty is a guarantee of national security. In order that the citizens, who have the

constitutional duty to defend the state against a foreign armed attack, could properly implement this duty, they must be well-prepared for that. Such preparation is ensured, *inter alia*, by military service.

Thus, the constitutional duty of citizens to perform military or alternative national defence service, which is consolidated in Paragraph 2 of Article 139 of the Constitution, is not an objective in itself – it is directly related to the duty, which is consolidated in Paragraph 1 of Article 139 of the Constitution, to defend the state against a foreign armed attack, as well as, in a certain aspect, to the right of citizens, which is consolidated in Paragraph 2 of Article 3 of the Constitution, to resist anyone who encroaches on the independence, territorial integrity, and constitutional order of the state.

Military service

The Constitutional Court's ruling of 24 September 2009

In its ruling of 13 December 2004, the Constitutional Court held that some functions of the state are fulfilled, primarily or mainly, through civil state (and municipal) institutions, whereas others are performed through military and/or paramilitary state institutions. It has also been held that, under the Constitution, state service is service to the State of Lithuania and the civil Nation; therefore, state service should be loyal to the State of Lithuania and its constitutional order; the Constitution does not tolerate such situations where a certain level of the system of state service, a certain state or municipal institution or individual state servants act contrary to the interests of the State of Lithuania or violate the constitutional order of the State of Lithuania. In the said ruling, it was also held that the constitutional imperative of the loyalty of state service to the State of Lithuania also raises special requirements for state service: state servants not only must not violate the Constitution and laws themselves, but also have the duty to take all necessary positive actions when protecting the constitutional order of the State of Lithuania.

… the independence of the state, its territorial integrity, and its constitutional order are among the most important constitutional values the protection of which is the priority obligation of the state authorities and all citizens. Therefore, the function of national defence, where such a function gives priority to the protection of constitutional values, requires a separate institutional system, which is composed of military and paramilitary state institutions. Service in this system constitutes one of the forms of the constitutional institution of state service, as service to the State of Lithuania and its civil Nation; this form of the constitutional institution of state service also includes military service, which directly ensures the performance of the function of national defence. Therefore, service in paramilitary and military institutions is subject to the basic constitutional requirements applicable to state service, *inter alia*, the requirement of loyalty to the state.

In this context, it needs to be noted that, even though the constitutional concept of state service includes military service, nevertheless, in view of the constitutional importance of the function of national defence (carried out by military service), which, as mentioned before, includes the protection of the priority constitutional values, military service is separated from the system of civil service.

The Constitutional Court has held that, under the Constitution, civil service is regarded as separate from military service, paramilitary service, or security service; the Constitution consolidates a differentiated concept of civil state institutions, on the one hand, and military and paramilitary state institutions, on the other hand; the said concept creates the legal preconditions for establishing, by means of legal acts, a differentiated regulation of relationships connected with the activities of civil state institutions and military and paramilitary state institutions, as well as for establishing such a legal status of persons working in civil and military and paramilitary state institutions that is distinguished by certain particularities (rulings of 24 December 2002 and 13 December 2004).

In this context, it needs to be noted that, under Article 140 of the Constitution, the main issues of national defence are considered and coordinated by the State Defence Council, which consists of the President of the Republic, the Prime Minister, the Speaker of the Seimas, the Minister of National Defence, and the Commander of the Armed Forces. The State Defence Council is headed by the President of the Republic (Paragraph 1); the President of the Republic is the Commander-in-Chief of the Armed Forces of

the State (Paragraph 2); the Government, the Minister of National Defence, and the Commander of the Armed Forces are responsible to the Seimas for the administration and command of the armed forces of the State (Paragraph 3); the Minister of National Defence may not be a serviceman who is not yet retired to the reserve (Paragraph 3). It also needs to be noted that, 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 the Seimas or members of municipal councils, nor may they hold any elective or appointive office in civil state service.

The … constitutional provisions and principles linked with national security, with the protection of sovereignty and the constitutional order, with the national foreign and defence policy, with organising the system of national defence, as well as the aforementioned statements of the official constitutional doctrine related to the interpretation of the constitutional concept of state service, imply the constitutional concept of military service where this concept includes the following most important aspects: military service is intended for carrying out the functions of national defence; therefore, it is one of the types of state service, but it is separated from civil service; military service guarantees the protection of the constitutional values of the utmost importance – the independence, territorial integrity, and constitutional order of the state – and the defence of the state against a foreign armed attack; the subjects of military service have a specific legal status; however, they are subject to special requirements and prohibitions; *inter alia*, Article 141 of the Constitution prohibits the said subjects from being members of the Seimas or members of municipal councils and from holding an elective or appointive office in civil state service; the legal regulation governing military service, which is one of the foundations of the national defence system, is the constitutional prerogative of the legislature consolidated in Paragraph 3 of Article 139 of the Constitution.

The duty of citizens to perform actual military service or alternative national defence service and to defend the state against a foreign armed attack; the legal regulation governing the organisation of the national defence system (*inter alia*, military service) and the defence of the state against a foreign armed attack (Article 139 of the Constitution)

The Constitutional Court's ruling of 24 September 2009

… Paragraph 2 of Article 139 of the Constitution provides for the duty to perform military or alternative national defence service; however, the Constitution does not *expressis verbis* establish all possible types of military service, or the forms of mandatory military service, or requirements for the subjects of military service. … the Constitution also does not *expressis verbis* consolidate the duty to perform such mandatory military service that is named in laws as initial mandatory military service. The Constitution assigns the legislature to establish the organisation of the national defence system. Thus, the Constitution consolidates the prerogative of the legislature to establish, while paying regard to the norms and principles of the Constitution, the regulation governing the national defence system, *inter alia*, the regulation governing military service.

In this context, it needs to be noted that the constitutional concept of mandatory military service, which is consolidated in Paragraph 2 of Article 139 of the Constitution, may not be identified with the notion of actual military service, which is used in Article 141 of the Constitution. The grounds for the organisation of actual military service may be very varied ones. … actual military service may be organised on the grounds of professional military service or on the grounds of voluntary and mandatory military service (or several said types of service). It is the discretion of the legislature to establish the legal regulation governing the organisation of actual military service. However, no matter how actual military service is organised, the legislature must establish the legal regulation to the effect that the constitutional mission of such service – ensuring the preparedness to defend and the defence of the state against a foreign armed attack – would not be denied.

While regulating, by means of laws, the relationships linked with the organisation of the national defence system, *inter alia*, the organisation of military service, the legislature has rather broad discretion.

For example, it may, by means of a law, establish certain types of military service, the forms of mandatory military service, requirements in connection with age or health, and other requirements for the subjects of military service, the procedure for performing military service, the conditions of exemption from mandatory military service linked with the circumstances due to which citizens may not perform such service (age, the state of health, etc.).

However, when implementing the said discretion, the legislature must pay regard to the norms and principles of the Constitution. *Inter alia*, Paragraph 2 of Article 5 of the Constitution, which provides that the scope of powers is limited by the Constitution, and the constitutional principle of a state under the rule of law give rise to such a requirement.

[…]

… while implementing the discretion, which is established in Paragraph 3 of Article 139 of the Constitution, to regulate the organisation of national defence, the legislature must pay regard to the norms and principles of the Constitution – the legislature must, by means of laws, establish such a regulation of the organisation of the national defence system, *inter alia*, that of the organisation of military service (including mandatory military service), that would ensure the protection of the main constitutional values – the independence, territorial integrity, and constitutional order of the state – and the adequate defence of the state against a foreign armed attack.

[…]

… the Constitution, *inter alia*, the provisions of Articles 3, 139, 141, and 142 thereof, gives rise to the duty of the legislature to establish such a legal regulation under which the Republic of Lithuania must have a regular and well-organised army, capable of performing its constitutional functions, *inter alia*, its obligation to defend the state against a foreign armed attack. However, in regulating the relationships in connection with the organisation of national defence, *inter alia*, the organisation of the armed forces, the legislature has rather broad discretion. … when paying regard to the norms and principles of the Constitution, the legislature may choose various models of the armed forces and the forms of military service. The Constitution does not prohibit establishing such a legal regulation under which the Lithuanian armed forces, whose mission is to protect and defend the state and its citizens from an armed attack, would be organised on the grounds of professional and voluntary military service. Article 139 of the Constitution may not be interpreted as meaning that the armed forces must be organised only on the grounds of mandatory military service and that every citizen has the duty to perform such obligatory military service that is named in laws as initial mandatory military service.

It also needs to be noted that the legislature, having consolidated, in a law, such a model of the organisation of the armed forces under which the armed forces are organised on the basis of professional and voluntary military service, must pay regard to the provisions of the Constitution, *inter alia*, to the imperative, which is consolidated in Paragraph 1 of Article 139 of the Constitution, that the defence of the State of Lithuania against a foreign armed attack is the right and duty of each citizen of the Republic of Lithuania. In this context, it needs to be emphasised that the formation of the armed forces organised on the basis of professional and voluntary military service does not deny the constitutional obligation of citizens to defend the State of Lithuania against a foreign armed attack; at the same time, the legislature is not exempted from the duty to establish such a legal regulation that would create the legal preconditions for the adequate training of citizens so that they could fulfil this constitutional obligation.

[…]

… the phrase “The citizens of the Republic of Lithuania must perform military … service”, which is consolidated in Paragraph 2 of Article 139 of the Constitution, may not be interpreted in the same way as ordinary law interprets the concept of mandatory military service. While interpreting this phrase, which is consolidated in the Constitution, regard must be paid to the constitutional meaning and mission of the institution of military service. As mentioned before, the constitutional mission of military service, *inter alia*, mandatory military service, is to ensure the preparedness to defend the state against a foreign armed attack and its defence. Mandatory military service is necessary so that the citizens would be prepared to defend the

state; however, this does not mean that this preparedness may be carried out only in one way – by performing initial mandatory military service and that each citizen has the duty to perform namely initial mandatory military service. The constitutional duty of citizens to perform military service and to prepare for the defence of the state against a foreign armed attack may be fulfilled in various forms, the variety of which is implied, *inter alia*, by the variety of the means of national defence. Therefore, the legislature, while regulating the relationships linked with military service, must pay regard to the constitutional mission of this service and establish such a legal regulation that would ensure the implementation of the constitutional purposes of military service, i.e. the adequate training of citizens for the defence of the state against a foreign armed attack. In this context, it needs to be noted that, as mentioned before, while regulating the relationships of military service, the legislature may establish, *inter alia*, the conditions for exemption from mandatory military service linked with the objective circumstances due to which citizens may not perform such service, i.e. age, the state of health, etc.

[…]

The Constitution, *inter alia*, Article 142 thereof, consolidates the institution of mobilisation. The concept of mobilisation is universally interpreted as meaning the preparation of the systems of state governance and economy, as well as of the armed forces, for martial law, *inter alia*, by calling up the citizens of the state to the armed forces when there is a threat of an armed attack against the state or a war begins. Under the Constitution, *inter alia*, Articles 139 and 142 thereof, the purpose of mobilisation is to organise the defence of the state against a foreign armed attack. One of the means to ensure mobilisation is the call-up of citizens to perform mandatory military service. In this context, it needs to be noted that the legislature has the constitutional duty to regulate, by means of laws, the procedure of performing mandatory military service in the event of mobilisation where the said procedure would ensure the defence of the state against armed aggression. In addition, the legislature must also establish such a legal regulation that would create the legal preconditions for the adequate training of citizens in advance so that, when mobilisation is announced, they could properly fulfil their constitutional duty to defend the state. Therefore, in the state, there must be not only regular armed forces, but also the necessary number of citizens properly trained to defend the state.

While regulating the institution of mandatory military service, the legislature must take into consideration not only the provisions of Paragraph 2 of Article 139 of the Constitution, which consolidates, *inter alia*, certain constitutional grounds of mandatory military service, but also other provisions of the Constitution, constitutional values and constitutional principles, *inter alia*, the constitutional principles of the State of Lithuania, its independence, territorial integrity, the defence of the constitutional order, and national defence. The protection of the said constitutional values is ensured, *inter alia*, by establishing the system including both military service and the preparedness of citizens to defend the state; the said system also covers the institution of mandatory military service. Therefore, in regulating the legal relationships of the national defence system, *inter alia*, the relationships of military service, the legislature must pay regard to the constitutional provisions and principles that give rise to the obligation to ensure the adequate national defence. Thus, such a legal regulation must be established by taking account of the geopolitical situation and other factors that influence national security. The legislature must assess possible threats to national security, long-term political processes, the participation of the state in the organisations of mutual assistance of states, the international obligations of the state in security missions, peacekeeping missions, etc.

Only such a legal regulation governing the national defence system, *inter alia*, the legal regulation governing military service, would not be in conflict with the Constitution where the said legal regulation would be established by taking account of possible threats to national security and would ensure the defence of the state against a foreign armed attack, *inter alia*, would ensure the adequate training of citizens for the defence of the state against a foreign armed attack.

In this context, it needs to be noted that the notion of the training of citizens to defend the state is rather broad, including not exclusively the training of citizens to defend the state against a foreign armed attack by means of arms. The preparedness to defend the state may not be understood only as service for gaining

military training. The needs and means of national defence may be very diverse, including not only the expansion of the armed forces and of armaments in order to strengthen the military power of the state, but also the informational-technological, industrial, and other means of a similar nature, which are not directly related to armed defence but, from a certain aspect, help strengthen the military power of the state. This diversity also determines the diversity of the specific ways of training citizens for national defence.

[…]

… such preconditions must be created for citizens who fulfil their constitutional duties, *inter alia*, the duty to defend the state against a foreign armed attack, that would enable them to prepare adequately to fulfil this duty. Otherwise, i.e. without the adequate training of citizens to fulfil their constitutional duty to defend the state against a foreign armed attack, there would be, *inter alia*, not only an unreasonably big threat to the health and/or life of citizens who, while being not adequately trained, are called up to defend their country against a foreign armed attack, but also such citizens would, in general, be unable to perform the duty, which arises from the Constitution, to defend their state; therefore, the duty consolidated in Paragraph 1 of Article 139 of the Constitution would be denied.

Consequently, the discretion of the legislature to establish the legal regulation of the organisation of the national defence system, *inter alia*, of the organisation of military service and national defence against a foreign armed attack (where national defence would also, in certain cases, be carried out by way of mobilisation, which is provided for in the Constitution), must be exercised by taking account of the constitutional rights of a citizen, of the right of a citizen to fulfil his/her duty to defend the state (*inter alia*, to perform mandatory military service in the event of mobilisation) while being adequately trained to do so.

Thus … when the legislature reorganises the national defence system, *inter alia*, by switching to the armed forces organised on the grounds of professional and voluntary military service and providing for the additional grounds for the postponement of initial mandatory military service, the Constitution, *inter alia*, the constitutional principles of a state under the rule of law, the separation of powers, responsible governance, the protection of legitimate expectations, legal clarity, and other principles give rise to the duty of the legislature to establish such a legal regulation governing the military service system that would lay down efficient means (which are different from initial mandatory military service, for example, mandatory military training, participation in the activity of organisations that are assigned to the national defence system, general events organised by the national defence system, etc.) of the training of citizens who have the duty to perform mandatory military service to defend the state – the means that would ensure the adequate training of citizens so that they could fulfil the constitutional duty to defend the state against a foreign armed attack (*inter alia*, in the event of mobilisation).

[…]

… when adopting the legal acts … that provide that the national defence system should be reorganised by switching to the armed forces organised on the grounds of professional and voluntary military service, the legislature must assess the geopolitical situation of the state from the point of view of reality and the possibilities of national defence.

[…]

… the Republic of Lithuania, while seeking to protect the values that are *expressis verbis* consolidated in the Constitution – the independence, territorial inviolability, and constitutional order of the state, must organise the national defence system, *inter alia*, military service, so that the state would have well-prepared regular military units that would be ready to react rapidly to threats to national security and would be formed on the basis of military service. They may be armed forces formed on the basis of both voluntary military service and mandatory military service or on the basis of professional military service (or on the basis of the said several types of military service) where such armed forces would be able to carry out the functions of national defence. Under the Constitution, *inter alia*, Paragraph 2 of Article 139 thereof, a concrete model of the armed forces must be established by the legislature.

[…]

As mentioned before, when the organisation of military service is regulated by means of laws, the institution of military obligation (mandatory military service), which is provided for in Paragraph 2 of Article 139 of the Constitution, must be ensured; the forms of the said institution are not *expressis verbis* defined in Paragraph 2 of Article 139 of the Constitution. …

… it also follows from the provisions of the Constitution, consolidated, *inter alia*, in Paragraph 1 of Article 139 and Article 142, that, in cases where mobilisation is announced in accordance with the procedure established by law, *inter alia*, in the event of a foreign armed attack, the constitutional duty arises for citizens to perform mandatory military service. The legislature has the constitutional obligation to regulate, by means of laws, the procedure of performing mandatory military service in the event of mobilisation where the said procedure would ensure the defence of the state against armed aggression. Taking account of this, it also needs to be noted that the legislature must establish such a legal regulation whereby the legal preconditions would be created for the proper preparation of citizens for mobilisation.

[…]

… The Constitution, *inter alia*, Paragraph 2 of Article 3 and Article 139 thereof, gives rise to the duty of the legislature, when reorganising the system of military service and the structure of the armed forces, to establish such a legal regulation that would ensure the proper organisation of the armed forces, the continuous performance of the functions of the armed forces linked with the ensuring of national defence, and the adequate training of citizens to defend the state against a foreign armed attack, *inter alia*, by the efficient means of preparation that are other than initial mandatory military service, by providing, in laws, for the concrete methods of the training of citizens, the procedure of implementing the said methods, etc.

The constitutional foundations of national defence

The Constitutional Court's ruling of 15 March 2011

The general constitutional foundations of state defence are consolidated in various provisions of the Constitution.

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

Article 8 of the Constitution prescribes that the seizure of state power or state institutions by force is considered anti-constitutional actions, which are unlawful and invalid.

Article 139 of the Constitution provides that the defence of the State of Lithuania against a foreign armed attack is the right and duty of each citizen of the Republic of Lithuania (Paragraph 1); the citizens of the Republic of Lithuania must perform military or alternative national defence service according to the procedure established by law (Paragraph 2); the organisation of national defence is established by law (Paragraph 3).

Article 140 of the Constitution states that the main issues of national defence are considered and coordinated by the State Defence Council, which consists of the President of the Republic, the Prime Minister, the Speaker of the Seimas, the Minister of National Defence, and the Commander of the Armed Forces. The State Defence Council is headed by the President of the Republic. The procedure for its formation and activities, as well as its powers, must be established by law (Paragraph 1); the President of the Republic is the Commander-in-Chief of the Armed Forces of the State (Paragraph 2); the Government, the Minister of National Defence, and the Commander of the Armed Forces are responsible to the Seimas for the administration and command of the armed forces of the State; the Minister of National Defence may not be a serviceman who is not yet retired to the reserve (Paragraph 3).

Item 20 of Article 67 of the Constitution, wherein the list of the constitutional powers of the Seimas is consolidated, provides that "The Seimas … shall impose … martial law, declare states of emergency, announce mobilisation, and adopt a decision to use the armed forces".

The powers of the Seimas established in Item 20 of Article 67 of the Constitution, which are related to the use of the armed forces, are particularised in Paragraph 1 of Article 142 of the Constitution, wherein it is prescribed that "The Seimas shall impose martial law, announce mobilisation or demobilisation, or adopt the decision to use the armed forces when the need arises to defend the Homeland or to fulfil the international obligations of the State of Lithuania".

[…]

Article 84 of the Constitution consolidates the list of the constitutional powers of the President of the Republic; Item 16 of this article provides that "The President of the Republic … shall, in the event of an armed attack threatening the sovereignty of the State or its territorial integrity, adopt decisions concerning defence against the armed aggression, the imposition of martial law, as well as mobilisation, and submit these decisions for approval at the next sitting of the Seimas".

The powers of the President of the Republic consolidated in Item 16 of Article 84 of the Constitution are particularised in Paragraph 2 of Article 142 of the Constitution, wherein it is established: "In the event of an armed attack threatening the sovereignty of the State or its territorial integrity, the President of the Republic shall immediately adopt a decision on defence against the armed aggression, impose martial law throughout the State or in its separate part, or announce mobilisation, and submit these decisions for approval at the next sitting of the Seimas, or immediately convene an extraordinary session in the period between sessions of the Seimas. The Seimas shall approve or overrule the decision of the President of the Republic."

… under the legal regulation established in Paragraph 2 of Article 142 of the Constitution, in the event of an armed attack that threatens the sovereignty of the state or its territorial integrity, a decision immediately adopted by the President of the Republic on the defence against the armed aggression, on the imposition of martial law throughout the state or in its separate part, or on the announcement of mobilisation acquires legal force from the moment of its adoption; however, the President of the Republic must submit this decision for approval at the next sitting of the Seimas (in the period between sessions of the Seimas, an extraordinary session of the Seimas must be convened immediately for this purpose); whereas the Seimas has the right to approve or overrule the decision of the President of the Republic.

In this context, it needs to be noted that Paragraph 2 of Article 140 of the Constitution, wherein it is prescribed that the President of the Republic is the Commander-in-Chief of the Armed Forces of the State, gives rise to the specific constitutional powers of the President of the Republic that are related, *inter alia*, to those established in Paragraph 2 of Article 142 of the Constitution. Under the Constitution, *inter alia*, the provision of Paragraph 2 of Article 5 thereof, whereby the scope of powers is limited by the Constitution, these specific constitutional powers of the President of the Republic as the Commander-in-Chief of the Armed Forces of the State may not be granted to any other subject by means of a law or another legal act.

[…]

… the legislature may also establish such powers of the President of the Republic that, though not *expressis verbis* specified in the Constitution, are in line with the constitutional legal status of the President of the Republic as the Commander-in-Chief of the Armed Forces of the State.

Article 94 of the Constitution consolidates the provision that the Government of the Republic of Lithuania protects the territorial inviolability of the Republic of Lithuania and guarantees state security.

Consequently, under the Constitution, *inter alia*, Article 140 thereof, in the course of deliberating and deciding national defence issues, various state institutions and officials take part, *inter alia*, the State Defence Council, which considers and coordinates the main issues of state defence (which consists of the President of the Republic, the Prime Minister, the Speaker of the Seimas, the Minister of National Defence, and the Commander of the Armed Forces), the Government, the Minister of National Defence, and the Commander of the Armed Forces, who are responsible to the Seimas for the administration and command of the armed forces of the state; however, decisions on the main issues of national defence are taken by two state institutions: the Seimas and the President of the Republic. The Seimas is empowered to adopt final decisions on the imposition of martial law, on the announcement of mobilisation and demobilisation, and on the adoption of the decision to use the armed forces when the need arises to defend the Homeland or to fulfil the

international obligations of the State of Lithuania; whereas the President of the Republic, in the event of an armed attack threatening the sovereignty of the state or its territorial integrity, has the powers to immediately adopt such decisions (concerning defence against the armed aggression, the imposition of martial law throughout the state or in its separate part, and the announcement of mobilisation) that are submitted for approval at the next sitting of the Seimas.

It should be noted that the Seimas, while implementing its constitutional power, which is consolidated in Paragraph 2 of Article 142 of the Constitution, to approve or overrule a decision of the President of the Republic concerning defence against armed aggression, the imposition of martial law, as well as the announcement of mobilisation in the event of an armed attack threatening the sovereignty of the state or its territorial integrity, is bound by the values consolidated in the Constitution and constitutionally important objectives, *inter alia*, by the independence of the state and the fulfilment of international obligations.

In this context, it should be noted that, as mentioned before, Article 139 of the Constitution provides that the defence of the State of Lithuania against a foreign armed attack is the right and duty of each citizen of the Republic of Lithuania (Paragraph 1); the citizens of the Republic of Lithuania must perform military or alternative national defence service according to the procedure established by law (Paragraph 2); the organisation of national defence is established by law (Paragraph 3).

When interpreting these provisions of the Constitution, as well as other provisions of the Constitution related to the said provisions, in its ruling of 24 September 2009, the Constitutional Court held:

– the Constitution, *inter alia*, the provisions of Articles 3 and 139 thereof, gives rise to the duty of the legislature to establish such a legal regulation under which the Republic of Lithuania must have a regular and well-organised army, capable of performing its constitutional functions, *inter alia*, its obligation to defend the state against a foreign armed attack;

– under the Constitution, a legal regulation governing national defence must be established by taking account of the geopolitical situation and other factors that influence national security; the legislature must assess possible threats to national security, long-term political processes, the participation of the state in the organisations of mutual assistance of states, the international obligations of the state in security missions, peacekeeping missions, etc.;

– the Republic of Lithuania, while seeking to protect the values that are *expressis verbis* enshrined in the Constitution – the independence, territorial inviolability, and constitutional order of the state, as well as while fulfilling the constitutionally justifiable obligations arising from international treaties, must organise the national defence system, *inter alia*, military service, so that the state would have well-prepared regular military units that would be ready to react rapidly to threats to state security, would be able to participate in collective defence operations and peacekeeping missions, and would be formed on the basis of military service.

In this context, it also needs to be noted that the Constitution, *inter alia*, the constitutional requirement that Lithuanian state power be organised in a democratic manner, the constitutional imperative of an open, just, and harmonious society, and the constitutional principle of responsible governance, means that military state institutions may not have priority over civil state institutions, that decisions made by military state institutions and officials must be based on decisions adopted by civil state institutions, and that military state institutions must be accountable to civil state institutions and must be controlled by them. Democratic civil control over military state institutions (armed forces) is a necessary precondition for civil democratic governance and, thus, also for a state under the rule of law.

[…]

… the general constitutionally consolidated foundations of international cooperation carried out by the state where such cooperation is related, *inter alia*, to the defence of the state, are characterised, *inter alia*, by the consolidation of the geopolitical orientation of the State of Lithuania – the participation of the state in European integration as a Member of the European Union and the striving of the state to ensure national independence and security by contributing to the creation of the international order based on law and justice.

… the geopolitical orientation of the State of Lithuania – the participation of the state in European integration – is inseparable from other international obligations of the Republic of Lithuania arising from the membership of Lithuania in other international organisations, *inter alia*, the United Nations and the North Atlantic Treaty Organisation; this membership provides Lithuania not only with additional security guarantees, but also implies the necessity to observe the international obligations undertaken by it.

In this context, it needs to be noted that the provisions of the Constitution whereby the general constitutional foundations of national defence and international cooperation (foreign policy) are consolidated are related, *inter alia*, to the fact that, under Paragraph 1 of Article 138 of the Constitution, the Seimas ratifies the international treaties of the Republic of Lithuania on political cooperation with foreign states, mutual assistance treaties, as well as treaties of a defensive nature related to the defence of the state (Item 2), on the renunciation of the use of force or threatening by force, as well as peace treaties (Item 3), on the presence and status of the armed forces of the Republic of Lithuania on the territories of foreign states (Item 4), and on the participation of the Republic of Lithuania in universal international organisations and regional international organisations (Item 5). The power of the Seimas, which is consolidated in Paragraph 1 of Article 142 of the Constitution, to adopt the decision to use the armed forces when the need arises to defend the Homeland or to fulfil the international obligations of the State of Lithuania also includes such a decision to use the armed forces when it is necessary to fulfil the international obligations of the Republic of Lithuania under international treaties of the Republic of Lithuania.

The aforesaid provisions of the Constitution imply that the ensuring of the independence and security of the state, *inter alia*, by using the armed forces, may, under the Constitution, be carried out both on the national and international scale (level).

[…]

… when the law provides for ensuring the independence and security of the state on the international scale (level), it is necessary to pay regard, *inter alia*, to the rule, established in Article 142 of the Constitution, according to which two state institutions are constitutionally empowered to adopt decisions on the main issues of national defence, i.e. the Seimas adopts final decisions, whereas the President of the Republic immediately (in the event of a threat) adopts such decisions that are submitted for approval at the next sitting for the Seimas. While paying regard to this rule of the delimitation and coordination of the powers of the Seimas and the President of the Republic in the area of national defence, which is consolidated in Article 142 of the Constitution, the legislature, under Paragraph 2 of Article 140 of the Constitution, wherein it is stipulated that the President of the Republic is the Commander-in-Chief of the Armed Forces of the State, may also establish a legal regulation under which the President of the Republic would be empowered to immediately adopt a decision on the defence against armed aggression not only in the event of an armed attack threatening the sovereignty of the state or its territorial integrity, as provided for in Item 16 of Article 84 and Paragraph 2 of Article 142 of the Constitution, but also in the event (as provided for in a collective defence treaty ratified by the Seimas) of an armed attack against the Republic of Lithuania and a state that is its ally in cases where such a decision must immediately be submitted for approval at the next sitting of the Seimas.

[…]

… under the Constitution, *inter alia*, Articles 135 and 136 thereof, the legislature, while regulating the implementation (fulfilment) of the rights and obligations that could arise or arise from the international treaties of the Republic of Lithuania, *inter alia*, a collective defence treaty ratified by the Seimas, and while paying regard to the powers (related to the use of the armed forces) of the Seimas and the President of the Republic, as established in Article 142 of the Constitution, has the discretion to determine also other state institutions that may adopt decisions on the participation of the units of the armed forces in international military exercises.

In this context, it should be noted that, as mentioned before, under Paragraph 3 of Article 140 of the Constitution, the Government, the Minister of National Defence, and the Commander of the Armed Forces are responsible to the Seimas for the administration and command of the armed forces of the State.

Thus, under the Constitution, the legislature may also establish such a legal regulation under which the Seimas, the Government, and the Minister of National Defence are granted the powers to send military units (of a certain size) of the Republic of Lithuania to another state for participation in international military exercises or other international military events.

The constitutional foundations of international cooperation carried out by the state in relation, *inter alia*, to national defence

See 13.1. Foreign policy, the ruling of 15 March 2011 ("The constitutional foundations of international cooperation carried out by the state; the geopolitical orientation of the state").

There may not be any foreign military bases on the territory of the Republic of Lithuania (Article 137 of the Constitution); there may be no military bases or army units of Russia, or the Commonwealth of Independent States or its constituent states, on the territory of the Republic of Lithuania (Article 3 of the Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions)

The Constitutional Court's ruling of 15 March 2011

… in the course of implementing the constitutional provisions on national defence and international cooperation related thereto, it is not allowed, *inter alia*, to disregard the prohibitions established in Article 137 of the Constitution and the Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions.

Article 137 of the Constitution provides that there may not be any weapons of mass destruction and foreign military bases on the territory of the Republic of Lithuania.

The Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions, which is a constituent part of the Constitution and was adopted while "invoking the 16 February 1918 and 11 March 1990 Acts on the Restoration of the Independent State of Lithuania and acting upon the will of the entire Nation, as expressed on 9 February 1991" (Preamble), consolidates the principled provision "To develop mutually advantageous relations with each state that was formerly a component of the USSR, but never join, in any form, any new political, military, economic, or other unions or commonwealths of states formed on the basis of the former USSR" (Article 1). In addition, the Constitutional Act provides that any activities seeking to draw the State of Lithuania into the unions or commonwealths of states specified in the first article of this Constitutional Act are regarded as hostile to the independence of Lithuania, and responsibility for them is established by law (Article 2); there may be no military bases or army units of Russia, or the Commonwealth of Independent States or its constituent states, on the territory of the Republic of Lithuania (Article 3).

… the provision of Article 137 of the Constitution that there may not be any foreign military bases on the territory of the Republic of Lithuania, *inter alia*, means that on the territory of the Republic of Lithuania there may not be any such military bases that are directed and controlled by foreign states. Such a prohibition, *inter alia*, does not mean that on the territory of the Republic of Lithuania there may not be any such military bases that, under the international treaties of the Republic of Lithuania, *inter alia*, a collective defence treaty ratified by the Seimas, are directed and controlled by the Republic of Lithuania jointly (together) with its states-allies.

… Article 3 of the Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions stipulates the imperative that there may be no military bases or army units of Russia, the Commonwealth of Independent States, or its constituent states, on the territory of the Republic of Lithuania, i.e. the said article establishes:

– the constitutional prohibition on the presence of any military bases of Russia, the Commonwealth of Independent States, or its constituent states on the territory of the Republic of Lithuania; this prohibition

means, *inter alia*, that, on the territory of the Republic of Lithuania, there may not be any such military bases that are directed or controlled by Russia, the Commonwealth of Independent States, or its constituent states;

– the constitutional prohibition on the presence of any army units of Russia, the Commonwealth of Independent States, or its constituent states on the territory of the Republic of Lithuania. This prohibition means, *inter alia*, that, on the territory of the Republic of Lithuania, there may not be any such army units the presence (deployment, use) of which is directed or controlled by Russia, the Commonwealth of Independent States, or its constituent states. Such a prohibition does not mean that, under the international treaties of the Republic of Lithuania, *inter alia*, a collective defence treaty ratified by the Seimas, and in accordance with the laws adopted for the purpose of the implementation of these treaties, any such short-term presence of the limited-size military units of Russia, the Commonwealth of Independent States, or its constituent states in international military exercises held on the territory of the Republic of Lithuania and directed and controlled by the Republic of Lithuania jointly (together) with its states-allies is not allowed. The said constitutional prohibition also does not mean that, under the international treaties of the Republic of Lithuania and in accordance with the laws adopted for the purpose of the implementation of these treaties, it would not be allowed to invite any limited-size military units of Russia, the Commonwealth of Independent States, or its constituent states for a short time to participate in international measures to help to remove the consequences of catastrophes, epidemics, natural or other calamities on the territory of the Republic of Lithuania, where the grounds, purpose, and nature of such an invitation for help are clear and constitutionally justifiable and where such measures are directed and controlled by the Republic of Lithuania.

Thus, under the Constitution, *inter alia*, the provisions of Articles 135, 136, and 138 thereof, while paying regard to the limitations and prohibitions consolidated in the Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions, the international treaties of the Republic of Lithuania and the laws adopted for the purpose of the implementation of those treaties may provide for various measures for ensuring state independence and security on the international scale (level), *inter alia*, collective and/or other joint international defence, strengthening international peace and security, other international cooperation of military nature where the grounds, purpose, and nature of the said cooperation are clear and constitutionally justifiable.

In this context, it needs to be noted that, under the Constitution, *inter alia*, Article 135 thereof, the legislature, while paying regard to the limitations and prohibitions consolidated in the Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions, may also establish such a legal regulation designed for the implementation of the international treaties of the Republic of Lithuania, *inter alia*, a collective defence treaty ratified by the Seimas, that would provide, *inter alia*, for the short-term participation of strictly limited-size military units of Russia, the Commonwealth of Independent States, or its constituent states in the exercises of the defence treaty Parties and of other states arranged on the territory of the Republic of Lithuania where such exercises are directed and controlled by the Republic of Lithuania jointly (together) with its states-allies, as well as the invitation of such military units in international measures to help to remove the consequences of catastrophes, epidemics, natural or other calamities on the territory of the Republic of Lithuania, where the grounds, purpose, and nature of such an invitation for help are clear and constitutionally justifiable and where such measures are directed and controlled by the Republic of Lithuania.

[…]

… under the Constitution, the legislature, while paying regard to the constitutional norms and principles, *inter alia*, the limitations consolidated in the Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions, which is a constituent part of the Constitution, may provide for such a manner of implementing the rights and obligations of the Republic of Lithuania under a collective defence treaty where the said manner would entail the arrival of military units of the states-allies of the Republic of Lithuania in the Republic of Lithuania and their use for the purposes of a collective defence operation.

[…]

However, the Constitution, *inter alia*, Article 3 of the Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions, prohibits the establishment of such a legal regulation whereby the short-term participation of limited-size army units of Russia, the Commonwealth of Independent States, or its constituent states in international military events taking place on the territory of the Republic of Lithuania is provided for, but no clear and constitutionally justifiable grounds, purposes, and nature of such participation are established.

Paramilitary (statutory) state institutions; the particularities of statutory state service (Article 141 of the Constitution)

The Constitutional Court's ruling of 27 February 2012

… the paramilitary services pointed out in Article 141 of the Constitution may not be identified with the military institutions of national defence, nor may the officials of the paramilitary services be identified with the servicemen of the national defence system, since the constitutional mission of paramilitary services is related not precisely with the defence of the state against aggression and the fulfilment of international defence obligations, but rather with other areas that are important to the security of the state and society (guarding and control of the state border, ensuring public order, the investigation of crimes, the protection of state secrets, etc.); on the other hand, in time of war, while fulfilling their main functions, such paramilitary services may also be commissioned to protect the state as part of the armed forces or to help the army to implement other tasks related to national defence and the international obligations of the state. Thus, the constitutional mission of such paramilitary services determines the necessity to organise their activities on the basis of statutory relationships.

Consequently, the notion "paramilitary … services" of Article 141 of the Constitution should be interpreted as including such statutory state institutions that are not categorised as belonging to the national defence system. These institutions are the police, interior service, and security service (i.e. police authorities, the bodies of interior service and security service), which are *expressis verbis* mentioned in Article 141 of the Constitution. The said statutory state institutions also include other state institutions whose activity, with respect to their mission and functions, should be organised on the basis of statutory relationships.

Article 141 of the Constitution implies that the officials of statutory state institutions perform statutory state service, which is a specific type of state service and is different from other (civil) state service and military service. The concept of statutory state service gives rise to the following features specific of this service: a special legal regulation establishing the particularities of the respective service by means of legal acts (statutes); the statutory relationships of strict hierarchical subordination, characterised, *inter alia*, by a specific regime of the performance of service (*inter alia*, the performance of service duties, the period of service, the particularities of official subordination, the system of special service ranks (grades) marking the career of the officials and their place in the hierarchy of statutory relationships, and the specificity of official (disciplinary) liability); special requirements for the officials of statutory state institutions (*inter alia*, those related to their loyalty to the State of Lithuania and their reliability, education, age, the state of health, etc.); specific powers vested in those officials (*inter alia*, with respect to persons not subordinate to them, as well as those related to the use of coercive measures); as well as special social and other guarantees.

It needs to be noted that Article 141 of the Constitution does not give an exhaustive list of paramilitary (statutory) state institutions; therefore, in regulating the relationships of state service, the legislature may also provide not only for police authorities, the bodies of interior service and security service (*inter alia*, customs authorities), but also for other state institutions the activity of which, with respect to their mission and functions, should be organised on the basis of statutory relationships, i.e. for such institutions in which statutory state service would be performed.

It also needs to be noted that statutory state service cannot be the same due to the variety of functions performed by it; therefore, the status of officials of the police, the interior service, the security service, and other state statutory institutions (*inter alia*, customs) must be differentiated and have the particularities established in the respective statutes.

Limitations on activities carried out by the officials of statutory state institutions (Paragraph 1 of Article 33 and Article 141 of the Constitution)

The Constitutional Court's ruling of 27 February 2012

Article 141 of the Constitution establishes special limitations on activities carried out by the officials of state statutory institutions. These limitations are aimed at ensuring the depoliticisation of statutory state institutions: the officials of statutory state institutions may not be members of the Seimas and members of municipal institutions, may not hold elective or appointive office in civil state service (i.e. service that is not categorised as statutory service); nor may they take part in the activities of political parties and organisations (*inter alia*, they may not be members of these parties and organisations or candidates for state or public office proposed or nominated by such parties and organisations). Such limitations express the constitutional principle of civil democratic control over state military and paramilitary institutions. Such limitations, *inter alia*, include special limitations on other work of officials of statutory state institutions – the prohibition on holding a position in civil (non-statutory) state service and in political parties and political organisations.

It needs to be noted that Article 141 of the Constitution does not explicitly establish any other limitations on activities carried out by the officials of state statutory institutions. However, this article, in establishing greater limitations on activities carried out by the officials of statutory state institutions than limitations that stem from Paragraph 1 of Article 33 of the Constitution on activities carried out by persons holding positions in civil (non-statutory) state service, as well as the mission and nature of statutory state service, implies that the legislature, while regulating the limitations imposed on the officials of state statutory institutions in connection with holding a position other than the one pointed out in Article 141 of the Constitution, not only must establish limitations that stem from Paragraph 1 of Article 33 of the Constitution, but also other limitations on another occupation if the necessity to establish such limitations is implied by the functions of statutory state institutions stemming from the constitutional mission of the respective statutory state institutions and/or the status of the officials of statutory state institutions. In establishing such limitations, the legislature has broad discretion, *inter alia*, to establish additional criteria, which must be taken into consideration while deciding whether another occupation held by the officials of statutory state institutions would be compatible with the functions of the respective statutory state institution and the status of its officials, also to establish an exhaustive list of activities prohibited for the officials of the respective statutory state institution, by indicating in it the areas of economic activity and/or occupation and positions incompatible with the performance of functions by the respective statutory state institution and/or incompatible with the status of its officials.

The particularities of military service

The Constitutional Court's ruling of 4 November 2015

… the Constitution gives rise to the mission of military service, *inter alia*, that of professional military service, to ensure the preparedness to defend the state against a foreign armed attack and to ensure the defence of the state. This mission implies certain specific particularities characteristic of this service, as, for instance: the necessity to constantly maintain combat readiness, as well as the related special regime governing the performance of service (*inter alia*, the particularities related to the period of military service, also to the uninterrupted continuity and mobility of military service; the relationships of strict hierarchical subordination among servicemen; the system of military ranks; the specificity of disciplinary responsibility); the special legal status of servicemen, which includes certain specific powers (related, *inter alia*, to the use of military force), the specific requirements that apply to servicemen performing this service (*inter alia*, requirements related to their loyalty to the State of Lithuania, their age, state of health, education, physical fitness, moral character, etc.), certain limitations and prohibitions, as well as special social and other guarantees; and a special legal regulation established by means of legal acts (statutes) providing for the procedure and conditions applicable to the performance of military service.

Limitations on activities carried out by professional military servicemen (Paragraph 1 of Article 33 and Article 141 of the Constitution

The Constitutional Court's ruling of 4 November 2015

… in regulating limitations on the activity of professional military servicemen, the constitutional requirements, specified in the Constitutional Court's ruling of 13 December 2004, for the legal regulation governing the right of state servants to have another occupation must be complied with. These limitations stemming from Paragraph 1 of Article 33 of the Constitution must be such that a conflict between public and private interests would be avoided in professional military service, that this service would not be used in pursuit of self-interest, that professional military servicemen would not be precluded from performing their duties, that the authority of professional military service would not be undermined, that no discredit would be brought upon service, and that professional military servicemen would not work in such enterprises, establishments, or organisations in which they have the powers of management or in which they control or supervise the activity of, or adopt any other decisions related to, such enterprises, establishments, or organisations.

[…]

… under Article 141 of the Constitution, persons performing actual military service or alternative service, as well as the officers, non-commissioned officers, re-enlistees of the national defence system who are not retired to the reserve may not be members of the Seimas or members of municipal councils and may not hold any elective or appointive office in civil state service or participate in the activities of political parties or political organisations.

Thus, Article 141 of the Constitution *expressis verbis* imposes certain special limitations on the activity of servicemen; such limitations aim to ensure the depoliticisation of military state institutions and reflect the constitutional principle of civil democratic control over military state institutions.

[…]

… in implementing its discretion, consolidated in Paragraph 3 of Article 139 of the Constitution, to regulate the organisation of the national defence system, the legislature must establish, by means of laws, such a regulation of the organisation of the national defence system, *inter alia*, the organisation of military service, that would ensure the protection of the constitutional values of utmost importance – the independence, territorial integrity, and constitutional order of the state, as well as the adequate defence of the state against a foreign armed attack; the Constitution gives rise to the duty of the legislature to establish such a legal regulation under which the Republic of Lithuania would have a regular and well-organised army, capable of performing the constitutional functions of national defence; in regulating relationships in connection with the national defence system, *inter alia*, military service, the legislature must take account of the geopolitical situation and other factors that have influence on national security; the legislature must also assess potential threats to national security, as well as long-term political processes, the participation of the state in the organisations of mutual assistance between states, and the international obligations of the state in security missions, peacekeeping missions, etc.

Thus … it should be held that, under the Constitution, when regulating relationships in connection with the imposition of limitations on the activity of professional military servicemen, the legislature must pay regard to Article 141 of the Constitution, which *expressis verbis* imposes certain special limitations on the activity of servicemen, and to Paragraph 1 of Article 33 thereof, which gives rise to limitations on the work of professional military servicemen other than that specified in Article 141 of the Constitution. The constitutional mission of military service, the particularities of the status of servicemen, a special nature of this service, as well as other important circumstances related to ensuring national defence and national security and related to the fulfilment of international obligations undertaken by the state, also imply the discretion of the legislature to establish other limitations on the activity of professional military servicemen.

[…]

At the same time, it needs to be emphasised that the legislature, in implementing its discretion to establish other limitations [i.e. other than those *expressis verbis* consolidated in Article 141 of the

Constitution and arising from Paragraph 1 of Article 33 thereof] on the activity of professional military servicemen, *inter alia*, to impose the prohibition on work under an employment contract or on self-employment, must lay down such a legal regulation governing the work remuneration of professional military servicemen that would ensure the possibility for these servicemen to perform their constitutional obligation fully and with dignity.

In this context, attention should be drawn to the fact that … work under an employment contract and self-employment constitute activity forms that are similar in terms of both their continuous nature and the aim of persons engaged in these activities to generate income, but differ in their nature: employment relationships are characterised by the subordination of an employee with respect to the employer, whereas self-employment is characterised by independence. Therefore, in implementing its discretion to establish limitations on the activity of professional military servicemen other than the limitations imposed *expressis verbis* under Article 141 of the Constitution and those deriving from Paragraph 1 of Article 33 thereof, the legislature may take into account, among other things, the particularities of the said types of activity.

The constitutional duty of citizens to perform military or alternative national defence service; the requirements for the legal regulation of the relationships connected with the organisation of national defence (Article 139 of the Constitution)

The Constitutional Court's ruling of 4 July 2017

Article 139 of the Constitution prescribes:

"The defence of the State of Lithuania against a foreign armed attack shall be the right and duty of each citizen of the Republic of Lithuania.

The citizens of the Republic of Lithuania must perform military or alternative national defence service according to the procedure established by law.

The organisation of national defence shall be established by law."

Thus, under this article of the Constitution, each citizen of the Republic of Lithuania has the right and duty to defend the State of Lithuania against a foreign armed attack, as well as the duty to perform military or alternative national defence service according to the procedure established by law. As held in the Constitutional Court's ruling of 24 September 2009, under the Constitution, only citizens of the Republic of Lithuania have the duty to defend the State of Lithuania against a foreign armed attack (Paragraph 1 of Article 139 of the Constitution) and the duty to perform military or alternative national defence service (Paragraph 2 of Article 139 of the Constitution). It is worth noting that these duties are the only duties of a citizen to the state that are *expressis verbis* consolidated in the Constitution and these duties arise from the citizenship of the Republic of Lithuania as a special legal interrelationship between the state and its citizens.

In its ruling of 24 September 2009, the Constitutional Court held the following:

– ensuring the implementation of the priority duty of state authorities and all citizens to protect such most important constitutional values as the independence, territorial integrity, and constitutional order of the state is a guarantee of the security of the state;

– in order that the citizens who have the constitutional duty to defend the state against a foreign armed attack could properly implement this duty, they must be well-prepared for that; such preparation is ensured, *inter alia*, by military service;

– the constitutional duty of citizens to perform military or alternative national defence service, which is consolidated in Paragraph 2 of Article 139 of the Constitution, is not an objective in itself – it is directly related to the duty, consolidated in Paragraph 1 of Article 139 of the Constitution, to defend the state against a foreign armed attack, as well as, in a certain respect, to the right of citizens, consolidated in Paragraph 2 of Article 3 of the Constitution, to resist anyone who encroaches on the independence, territorial integrity, and constitutional order of the state.

In its rulings of 24 September 2009 and 4 November 2015, when interpreting the provisions of Article 139 of the Constitution, the Constitutional Court also held that the Constitution assigns the legislature

to establish the organisation of the national defence system; regulating the relationships in connection with the organisation of national defence, the legislature has rather broad discretion; however, in exercising this discretion, the legislature must pay regard to the norms and principles of the Constitution; laws must establish such a regulation of the organisation of the national defence system, *inter alia*, that of the organisation of military service, that would ensure the protection of the constitutional values of the utmost importance such as the independence, territorial integrity, and constitutional order of the state, as well as the proper defence of the state against a foreign armed attack, *inter alia*, the proper training of citizens for the defence of the state against a foreign armed attack.

In its ruling of 24 September 2009, the Constitutional Court also noted that the notion of the preparedness of citizens to defend the state is rather broad, including not only the preparedness of citizens to defend the state against a foreign armed attack by means of arms; the preparedness to defend the state cannot be understood only as service in order to gain military training; the needs and means of national defence may be very diverse, including not only the expansion of the armed forces and armaments in order to strengthen the military power of the state, but also the informational-technological, industrial, and other means of a similar nature, which are not directly related to armed defence but, in a certain respect, lead to the strengthening of the military power of the state; this diversity also determines the diversity of the specific ways of training citizens for national defence.

It should be noted that, according to Paragraph 2 of Article 139 of the Constitution, alternative national defence service may be assigned instead of military service. The establishment of the constitutional institution of alternative national defence service is linked, *inter alia*, to the constitutionally guaranteed freedom of thought, religion, and conscience.

[…]

Thus, under Paragraph 2 of Article 139 of the Constitution, interpreted in conjunction with Article 26 thereof, which establishes freedom of thought, religion, and conscience, persons who are not able to perform military service due to their religious or other convictions have the right to perform alternative national defence service instead of military service in accordance with the procedure established by law. In regulating the organisation of national defence, the legislature is obliged to provide for the conditions for implementing this constitutional right of citizens, *inter alia*, the length of alternative national defence service and the procedure for its performance. In doing so, the legislature has broad discretion but must not provide for any such conditions for performing alternative national defence service that would render this service ineffective or inconsistent with its essence; the legislature must also establish such a procedure for assigning citizens to perform alternative national defence service that would allow assessing the requests of citizens to perform this service in terms of their reasonableness; otherwise, the constitutional right and duty of citizens to defend the state against a foreign armed attack and to prepare well for such defence by performing military service could be denied.

In this context, it should be pointed out that, in view of its content, Article 26 of the Constitution is linked to Articles 27 and 28 thereof, under which the convictions, practised religion, or belief of a person may not serve as a justification for a crime or failure to observe laws (Article 27) and, while implementing his/her rights and exercising his/her freedoms, everyone must observe the Constitution and laws and must not restrict the rights and freedoms of other people (Article 28). Among other things, this means that, on the grounds of his/her convictions, practised religion, or belief, no one may refuse to fulfil the constitutionally established duties, *inter alia*, the duty of a citizen to perform military or alternative national defence service, or demand the exemption from these duties.

Interpreting Paragraph 2 of Article 139 of the Constitution in its ruling of 24 September 2009, the Constitutional Court held that a law may establish such conditions for exemption from mandatory military service that are related to objective circumstances due to which the citizens cannot perform this service (age, state of health, etc.).

… under Paragraph 2 of Article 139 of the Constitution, a law may not establish such conditions for exemption from the constitutional duty of citizens to perform military service or alternative national defence

service that would be unrelated to objective circumstances due to which the citizens cannot perform this duty; failure to comply with this requirement could deny the said constitutional duty of citizens and, at the same time, no preconditions would be created for the proper fulfilment of the constitutional right and duty of each citizen to defend the state against a foreign armed attack.

It should be noted that, under Paragraph 2 of Article 139 of the Constitution, the legislature may provide for the possibility of deferring the fulfilment of the constitutional duty of citizens to perform military or alternative national defence service in cases where the citizen is temporarily unable to perform this service due to the important reasons specified in the law or in cases where the important interests of the person, family, or society might be injured if such service were not deferred at the given time. Once the reasons for deferring service are no longer applicable, the citizen must perform military or alternative national defence service.

It should also be noted that, in regulating the relationships connected with military or alternative national defence service, *inter alia*, the assignment to perform alternative national defence service instead of military service, exemption from the duty to perform military or alternative national defence service, and deferral of the fulfilment of this constitutional duty, the legislature must observe the requirements stemming from the Constitution, *inter alia*, the constitutional principles of the equality of the rights of persons, proportionality, reasonableness, and justice.

[…]

In the context of the constitutional justice case at issue, it should be noted that the neutrality and secularity of the state also mean that, under the Constitution, the religion professed by a person does not constitute a basis for exempting the person from the constitutional duties of a citizen to the state, *inter alia*, from the duty to perform military or alternative national defence service, consolidated in Paragraph 2 of Article 139 of the Constitution.

The special guarantees for citizens who have completed military service (Paragraph 3 of Article 139 of the Constitution)

The Constitutional Court's ruling of 6 June 2018

… as held by the Constitutional Court in its ruling of 24 September 2009, in implementing its discretion, consolidated in Paragraph 3 of Article 139 of the Constitution, to regulate the organisation of the national defence system, the legislature must establish, by means of laws, such a regulation of the organisation of the national defence system, *inter alia*, the organisation of military service, that would ensure the protection of such constitutional values of utmost importance as the independence, territorial integrity, and constitutional order of the state, as well as the proper defence of the state against a foreign armed attack. These powers of the legislature, stemming from Paragraph 3 of Article 139 of the Constitution, among other things, imply that, taking into account the constitutional importance of military service and seeking to establish the effective organisation of military service, *inter alia*, to ensure the necessary number of citizens properly trained to defend the state, the legislature may provide for the special guarantees for citizens who have completed military service and, by these guarantees, *inter alia*, encourage the performance of military service and facilitate the social and economic integration of citizens who have completed it.

On the other hand … in regulating the relationships connected with state service, the legislature must pay regard to the requirement, stemming from Paragraph 1 of Article 33 of the Constitution, to ensure equal competition for persons entering state service, which implies that persons entering state service must be selected on the basis of their knowledge and skills necessary to perform the respective duties of a state servant and that regard must be paid to the imperatives, which stem from Article 29 of the Constitution, in relation to the equality of the rights of persons and non-discrimination and non-granting of privileges on the grounds *expressis verbis* specified in the Constitution or other constitutionally unjustifiable grounds. This means that, when regulating the relationships connected with entering state service, the legislature must take into account, *inter alia*, Paragraph 2 of Article 139 of the Constitution, which provides that a law may lay

down the grounds for exemption from the duty to perform the military obligation in relation to objective circumstances, which prevent citizens from performing this obligation (*inter alia*, due to the state of health or age), as well as where citizens are exempt from this obligation on the grounds of gender; in addition, under Paragraph 2 of Article 139 of the Constitution, a law may lay down the grounds for the deferment of mandatory military service and alternative national defence service, or the grounds for early release from such service, where such grounds are related to the state of health of the person or other important personal, family, or social circumstances. In view of this, under the Constitution, compared to citizens who have completed the military or alternative national defence service established by means of a law, less favourable conditions may not be created by means of a law to enter state service for those citizens who are exempt from the military obligation due to objective circumstances on the grounds laid down by means of a law, nor may such less favourable conditions be created for those for whom mandatory military service or alternative national defence service has been deferred or who were released early from the said service due to the state of health or other important personal, family, or social circumstances on the grounds laid down by means of a law.