3. LEGAL RESPONSIBILITY

On the constitutional responsibility, see 4. The state and its institutions, 4.4. The responsibility of the authorities to society. The constitutional responsibility of the highest-ranking state officials.

3.1. GENERAL PROVISIONS

A criminal conduct simulation model

The Constitutional Court's ruling of 8 May 2000

… the obligation of the state and its institutions is prevention of crime. A criminal conduct simulation model may only serve as one of the measures in the detection of a crime prepared by a person or in the detection of a crime at an early stage of its commission. State institutions may not establish any such a legal regulation that would permit state special services to incite or provoke a person to commit a crime so that after it there would emerge the grounds for prosecuting the said person.

[…]

It needs to be noted that by means of the model it is only permitted to "join" to long-lasting or continuing crimes, or to crimes that are in progress, but are not finished. Such criminal acts continue without the efforts of undercover agents taking part in operational activities. The undercover agents only imitate the actions of the preparation of a crime or those of a crime that is in progress. It is not permitted, by means of the model, to incite or provoke the commission of a new crime or to incite the commission of a criminal act that was only prepared by an individual, but later the said individual stopped such an act. … The disregard of the limits of the application of the model established in [the law], provoking the commission of a crime or any other abuse by means of the model makes the use of the model unlawful. The investigation and assessment of such circumstances are a matter of judicial consideration.

[…]

Performing the actions exhibiting elements of a crime, undercover agents may not use physical or psychological coercion against persons suspected of having committed a crime, may not put them under any active pressure, or incite or provoke them to commit a crime. …

The model is carried out in a covert manner, i.e. a person to whom it is applied is unaware of it, as, otherwise, it would become ineffective. Persons to whom lawful actions that exhibit elements of crime are applied acquire the real possibility of filing a complaint against, in their opinion, the unreasonable and unlawful actions of undercover agents only after they become aware of the model applied against them; however, this is justifiable. …

[…]

… no forms of operational activities, including a criminal conduct simulation model, may be applied against the President of the Republic.

[…]

The immunity of a member of the Seimas is narrower than that of the President of the Republic: if there is the consent of the Seimas, a member of the Seimas may be held criminally liable. Therefore, the provisions of the Constitution do not prohibit such a legal regulation by which the application of the model and other forms of operational activities against a member of the Seimas, as well as against other persons, are permissible.

Ignorance of the law exempts no one from responsibility (Paragraph 3 of Article 7 of the Constitution)

The Constitutional Court's ruling of 8 May 2000

Under Paragraph 3 of Article 7 of the Constitution, ignorance of the law exempts no one from responsibility. The laws of the Republic of Lithuania prohibiting certain acts and providing for responsibility in cases of their commission are accessible and known to the public. All laws and legal acts are officially published in the official gazette *Valstybės žinios*. Therefore, it is presumed that every individual, when violating prohibitions established in laws, is aware of the fact that this will lead to the particular reaction of state law enforcement institutions and comprehends that for a committed crime the state will apply strict measures against him/her, and that such measures will correct, hinder, or stop his/her unlawful conduct.

The prohibition on compelling persons to give evidence against themselves, or their family members, or close relatives (Paragraph 3 of Article 31 of the Constitution)

The Constitutional Court's ruling of 19 September 2000

… Article 31 of the Constitution contains the provision that persons must not be compelled to give evidence against themselves, or their family members or close relatives. In penal laws, there are norms permitting a witness to refuse to testify on such a basis. However, in cases where such persons, being aware that they have the right to refuse to testify, agree to give evidence as witnesses but, later, intentionally commit perjury, they may be held criminally liable.

The proportionality of responsibility for violations of law

The Constitutional Court's ruling of 2 October 2001

Establishing administrative responsibility for violations of law, the legislature must observe the principles consolidated in the Constitution. The entire legal system must be based on the constitutional principle of a state under the rule of law; the said principle also implies the proportionality of established legal responsibility.

The Constitutional Court has held that the measures established by the state for violations of law must be proportionate to a violation of law, must be in line with the legitimate and generally important objectives sought, and must not restrain a person clearly more than necessary in order to achieve these objectives. The constitutional principles of justice and a state under the rule of law also mean that "there must be a fair balance (proportion) between the objective sought and the means to attain this objective, as well as between the violations of law and the penalties established for these violations. These principles preclude imposing such penalties for violations of law and such sizes of fines that would evidently be disproportionate to the violation of law and the objective sought" (ruling of 6 December 2000).

Thus, in the course of the legislative establishment of responsibility and its implementation, a fair balance must be sustained between the interests of society and those of a person so as to avoid unreasonable limitations on the rights of persons. On the basis of this principle, the rights of persons may be limited, by means of a law, to the extent only necessary for the protection of public interests, and there must be a reasonable relation between the adopted measures and the legitimate and generally important objective sought. In order to achieve this objective, such measures may be established that would be sufficient and would not limit the rights of persons more than necessary.

The established punishments must provide courts with the possibility of administering justice (Article 109 of the Constitution)

The Constitutional Court's ruling of 10 June 2003

According to Article 109 of the Constitution, in the Republic of Lithuania, justice is administered only by courts (Paragraph 1); when administering justice, judges and courts are independent (Paragraph 2); when considering cases, judges obey only the law (Paragraph 3). Therefore, punishments established in a penal law and their system must be such that a court would be able to administer justice when imposing punishments.

Under the Constitution, it is not allowed to establish in a penal law such a legal regulation (punishments or their sizes) on the basis of which a court, taking account of all circumstances of a case and applying a

penal law, would not be able to individualise the punishment that is imposed on a concrete person for a concrete criminal act.

The legislature, having the constitutional powers to establish punishments for criminal acts and sizes of these punishments, has the duty to provide maximum limits of punishments for certain criminal acts. If the maximum limit of the punishment for a particular criminal act were not established in a penal law, the preconditions for imposing unreasonably strict punishments and, thus, for violating human rights and freedoms would be created. According to the Constitution, the legislature may also establish minimum limits of punishments for certain criminal acts.

By specifying certain acts as crimes and establishing minimum and maximum limits of punishments for such acts, the legislature may use various ways of consolidating the sizes of the said punishments, and may indicate the minimum or maximum limit of a punishment in the sanction of the norm of a penal law that establishes responsibility for a certain criminal act.

Having chosen such a way of formulating a sanction for the commission of a criminal act where the article itself, establishing responsibility for the specified criminal act, provides for such a minimum punishment of imprisonment that is strict, the legislature must, at the same time, by means of a law, establish such a legal regulation according to which a court, by imposing a punishment for this criminal act, must have the possibility of taking account of all circumstances of the case that mitigate criminal responsibility, as well as of circumstances that are not *expressis verbis* specified in the law, and to impose a punishment that is milder than that provided for under the law.

[…]

It should be noted that the constitutional right to a fair trial means, *inter alia*, not only that the principles and norms of criminal procedure law must be observed in court proceedings, but also that the punishment established in a penal law and imposed by a court must be just; a penal law must provide for all opportunities for a court to impose, in consideration of all circumstances of the case, a just punishment on the person who committed a criminal act. The imposition of an unjust punishment would imply that the right of a person to a fair trial is violated; consequently, this would imply that Paragraph 2 of Article 31 of the Constitution and the constitutional principle of a state under the rule of law are also violated.

Imposing a milder punishment

The Constitutional Court's ruling of 10 June 2003

According to the Constitution, the legislature, specifying certain acts as crimes in a penal law and establishing punishments for them and the minimum limit of these punishments, is also empowered to establish the grounds under which a punishment that is milder than that provided for by law may be imposed.

[…]

… having chosen such a way of formulating a sanction for the commission of a criminal act where the article itself, establishing responsibility for the specified criminal act, provides for such a minimum punishment of imprisonment that is strict, the legislature must, at the same time, by means of a law, establish such a legal regulation according to which a court, by imposing a punishment for this criminal act, must have the possibility of taking account of all circumstances of the case that mitigate criminal responsibility, as well as of circumstances that are not *expressis verbis* specified in the law, and to impose a punishment that is milder than that provided for under the law.

… the Constitution consolidates human rights and freedoms, other constitutional values that must be protected and defended … one of the means for protecting human rights and freedoms and other constitutional values is criminal responsibility for criminal acts. Therefore, the imposition of a punishment that is milder than that provided for under the law is not a rule, but an exception: a court may impose a punishment that is milder than that provided for under the law only if there exist special circumstances mitigating responsibility, where a punishment imposed without taking account of those circumstances would obviously be unjust. A court has the duty to apply the institution of a punishment that is milder than that

provided for under the law especially attentively and carefully, so that the interests of a victim, society, and those of the state would not be violated. In each particular case, the decision of a court to impose a punishment that is milder than that provided for under the law must be reasoned. If a punishment that is milder than that provided for under the law is imposed groundlessly and unreasonably, justice would not be administered. This would be in conflict with justice and the constitutional principle of a state under the rule of law.

The presumption of innocence (Paragraph 1 of Article 31 of the Constitution)

The Constitutional Court's ruling of 29 December 2004

Paragraph 1 of Article 31 of the Constitution prescribes: "A person shall be presumed innocent until proved guilty according to the procedure established by law and declared guilty by an effective court judgment."

The presumption of innocence consolidated in Paragraph 1 of Article 31 of the Constitution is one of the most important guarantees of the administration of justice in a democratic state. It is a fundamental principle of administering justice in the process of criminal cases and an important guarantee of human rights and freedoms. It is presumed that a person has not committed a crime until his/her guilt is proved according to the procedure established by law and he/she is declared guilty by an effective court judgment. The presumption of innocence is inseparably linked with respect for and the protection of other constitutional human rights and freedoms, as well as acquired rights. It is especially important that state institutions and officials respect the presumption of innocence. It should be noted that public persons should in general restrain from referring to a person as a criminal until the said person is proved guilty of committing a crime according to the procedure established by law and declared guilty by an effective court judgment. Otherwise, human honour and dignity could become violated and human rights and freedoms could be undermined.

The presumption of innocence consolidated in Paragraph 1 of Article 31 of the Constitution may not be interpreted only linguistically and as one that is linked only with the administration of justice in the process of criminal cases. The presumption of innocence, which is consolidated in Paragraph 1 of Article 31 of the Constitution, when evaluated in the context of other provisions of the Constitution, has a broader content and must not be linked only with criminal legal relationships.

Crimes; the obligation of the state to ensure effective protection against criminal attempts

The Constitutional Court's ruling of 29 December 2004

Crimes are violations of law by which human rights and freedoms, as well as other values protected and defended by the Constitution, are grossly violated. The mission of the state as the political organisation of all society is to ensure human rights and freedoms and to guarantee the public interest; therefore, when fulfilling its functions and acting in the interests of all society, the state has the obligation to ensure the effective protection of human rights and freedoms, other values protected and defended by the Constitution, every individual and all society against, *inter alia*, criminal attempts.

The Constitution takes a negative attitude to crimes as social evil; this attitude is reflected in various articles of the Constitution, *inter alia,* the ones in which the notions "crime", "criminal actions", "criminal" are used directly. For example, according to Paragraph 2 of Article 24 of the Constitution, without the consent of the resident, it is not be permitted to enter his/her home otherwise than, *inter alia*, according to the procedure established by law when this is necessary to apprehend a criminal; according to Paragraph 4 of Article 25 of the Constitution, the freedom to express convictions and to impart information is incompatible with criminal actions – incitement to national, racial, religious, or social hatred, incitement to violence or to discrimination, as well as defamation and disinformation; according to Article 27 of the Constitution, convictions, practised religion, or belief may not serve as a justification, *inter alia*, for a crime; according to Article 31 of the Constitution, a person is presumed innocent until proved guilty according to the procedure established by law and declared guilty by an effective court judgment (Paragraph 1); a person charged with committing a crime has the right to a public and fair hearing of his/her case by an independent

and impartial court (Paragraph 2); punishment may be imposed or applied only on the grounds established by law (Paragraph 4); no one may be punished twice for the same offence (Paragraph 5); a person suspected of committing a crime, as well as the accused, is guaranteed, from the moment of his/her apprehension or first interrogation, the right to defence, as well as the right to an advocate (Paragraph 6); one of the grounds for removing from office the highest-ranking state officials specified in Article 74 of the Constitution (or revoking the mandate of a member of the Seimas) is "found to have committed a crime".

To ensure the safety of each human being and all society from crimes is a duty of the state and one of its priority tasks, since crimes violate not only human rights and freedoms, as well as other values protected and defended by the Constitution, but also make a negative impact on the living conditions and subsistence level of people; in addition, crimes have a detrimental effect on the foundations of the life of the state and society. If the state fails to take proper actions in order to prevent crimes, the trust in state authority and laws would be destroyed and disrespect for legal order and various social institutions would increase. Therefore, according to the Constitution, the state as the organisation of all society, which must guarantee the public interest, has not only the right, but also the duty to take various lawful measures preventing crimes, as well as restricting and reducing crime. Measures established and applied by the state must be effective.

In a democratic state under the rule of law, the legislature has the right and, at the same time, the duty to prohibit, by means of laws, such acts by which essential harm is inflicted on the interests of persons, society, or those of the state, or if a threat occurs where, due to such acts, the said damage will be inflicted. According to the Constitution, it is allowed to define what acts are criminal and to establish criminal responsibility for such acts only by means of a law. It should be noted that a law may recognise as criminal acts only such acts that are truly dangerous and by which harm is really inflicted on the interests of persons, society, or the state, or if a threat occurs where, due to such acts, the said damage will be inflicted.

Repressive and preventive measures for restricting and reducing crime

The Constitutional Court's ruling of 29 December 2004

The legislature, having considered the threat caused by crimes, the scope of crimes, their occurrence, dynamics, structure, as well as various criminogenic factors, has the duty to establish measures the purpose of which is to protect a person, society, and the state from criminal attempts. Under the Constitution, the legislature has the right to choose various measures of restricting and reducing crime, as well as to establish the conditions and procedure of the application thereof. In doing so, the legislature must pay regard to the Constitution.

Both legal and other than legal (organisational, economic, etc.) measures should be applied when seeking to restrict and to reduce crime. … the legal measures of restricting and reducing crime differ also in whether they are aimed at reacting to the already committed crime and deterring persons who have already committed crimes and other persons from new criminal attempts (repressive measures), or at preventing crimes, where the risk of committing them is greater in cases where no such measures are taken (preventive measures).

The repressive measures of restricting and reducing crime comprise, *inter alia*, the fact that laws define which acts are criminal and establish punishments for committing such acts. These measures are aimed not only at establishing the legal grounds for punishing persons guilty of committing a crime, but also, by threatening with punishments and establishing the legal grounds for punishing persons who commit crimes, at protecting every person, all society, and the state from criminal attempts. According to the Constitution, the state prosecutes persons who commit crimes, their guilt is proved according to the procedure established by law, and the punishments, established by law, for committed crimes are imposed on them.

When restricting and reducing crime, it is necessary to apply not only repressive, but also preventive measures. In its 9 December 1998 ruling, the Constitutional Court stressed the importance of the system of various effectively applied preventive measures in preventing crimes. It has been mentioned that preventive measures are aimed at preventing such crimes where the risk of committing them is greater if no such measures are taken.

It should be noted that, although the final objective of the repressive and preventive measures of restricting and reducing crime is the same – they are aimed at eliminating crime, they still have objective differences: they differ in the grounds of their application, direct aim, content, as well as in the legal consequences of their application. Repressive measures are a reaction to an already committed crime and seek to deter persons who have already committed crimes and other individuals from new criminal attempts, while preventive measures are aimed at preventing such crimes where the risk of committing them is greater if no such measures are taken. … a punishment may be imposed on a person who has committed a crime, whereas preventive measures do not constitute a punishment – their purpose is to prevent a person from committing a crime and, thus, also to protect the public interest. Moreover, in such a way, a person who, according to the data received in a legal manner, would tend to commit a crime unless deterred by preventive measures is ultimately also protected. In addition, it should be noted that preventive measures, which are aimed at restricting and reducing crime, are normally linked with a particular limitation on the implementation of human rights and freedoms; it should be stressed that the said limitation must not deny the essence of these rights and freedoms.

The aforementioned objective differences between repressive and preventive measures also determine the particularities of their legal regulation.

Special danger posed by organised criminal groups (syndicates); the duty of the state to create an effective system of restricting and reducing organised crime

The Constitutional Court's ruling of 29 December 2004

… organised criminal groups (syndicates), crimes committed by them, or the fact that they are going to commit such crimes pose a special threat to a person, his/her rights and freedoms, society, and the state.

It is worth stressing that the majority of especially dangerous crimes, for example, terrorism, trafficking in people, criminal trade in weapons and drugs, money laundering, as well as financial crimes and crimes related to corruption, are often committed namely by organised criminal groups (syndicates). If organised crime were not prevented and organised criminal groups (syndicates) were not prosecuted, a threat would be posed to the constitutional values, *inter alia*, the rights and freedoms of a person, the legal bases of the life of society, which are consolidated in the Constitution, the state as the organisation of all society, as well as to all society.

[…]

… Lithuania as a democratic state under the rule of law … has the duty to establish and apply both repressive and preventive measures adequate to the threat posed by organised crime. When assessing these measures, it should be noted that, in general, the interpretation that the constitutional recognition of the innate nature of human rights and freedoms, the broad catalogue of innate human rights and freedoms, which is consolidated in the Constitution, and other constitutional institutions do not permit the establishment and application of effective and, if needed, quite strict measures for restricting and reducing organised crime would be misleading. Quite to the contrary, the duty of the state as the organisation of all society to protect a person and the state from the threat caused by crimes obligates it to establish and to unhesitatingly apply effective measures for restricting and reducing crime, including organised crime.

In this context, it should be noted that the Constitution consolidates such a concept of a democratic state where the state not only seeks to protect and defend a person and society from crimes and other dangerous violations of law, but also is able to do this effectively. Thus, the state must create and effectively apply such a system of measures for restricting and reducing crime, especially organised crime, that would also comprise preventive measures adequate to the threat posed by organised crime. Otherwise, according to the Constitution, the duty of the state to ensure the security of each individual and all society, as well as the legal order based on the constitutional values, would not be implemented.

On the other hand, the concept of a democratic state under the rule of law, as entrenched in the Constitution, where such a democratic state seeks and is able to protect and defend a person and society from crimes and other dangerous violations of law, may not become a basis for violating human rights and

freedoms, for restricting them more than necessary in order to achieve legitimate objectives important to society, or for denying by such restrictions the essence of human rights and freedoms. Therefore, preventive measures aimed at restricting and reducing crime, including organised crime, must be established by means of a law that must provide for the grounds and objectives of the application of these measures; a law must also consolidate a system of control over imposing and applying various preventive measures, comprising, *inter alia*, judicial control and the right of a person to apply to a court regarding a violation of his/her rights.

Establishing and applying preventive measures aimed at restricting and reducing organised crime

The Constitutional Court's ruling of 29 December 2004

… when deciding whether a law by which the implementation of the rights and freedoms of a person are limited infringes the constitutional principle of proportionality as one of the elements of the constitutional principle of a state under the rule of law, it is necessary to assess whether the measures established in the law are in compliance with the legitimate objectives important to society, whether these measures are necessary in order to attain the specified objectives, and whether these measures restrict the rights and freedoms of a person clearly more than necessary in order to attain the said objectives.

… jurisdictional and other law-applying institutions, when applying preventive measures aimed at restricting and reducing organised crime that are linked with limitations on the implementation of particular rights and freedoms of a person, must thoroughly assess in every case a concrete situation, investigate all significant circumstances, find out whether it is possible to achieve the same objectives without limiting the implementation of human rights and freedoms, and, having find out that such a limitation is necessary in order to attain the said objectives of applying preventive measures, must ensure that the implementation of these rights and freedoms is not limited more than necessary in order to achieve the said objectives. If this is not done, human rights and freedoms could be violated.

[…]

… in cases where the data, received in accordance with the procedure established under the law, about the relations of persons with organised criminal groups, criminal syndicates, or their members, constitute a sufficient basis for considering that these persons may commit grave crimes, i.e. when particular activity of persons or their relations prove the threat to constitutional values, *inter alia*, human rights and freedoms, the constitutional order, the safety of society and the state, as well as public order, it is allowed to establish, by means of a law, preventive measures that provide for certain control over the conduct of such persons. As such, the preventive measures that are aimed at restricting and reducing organised crime should not be considered a constitutionally unreasonable limitation on the human right to privacy, but only on the condition that they are established by means of a law, if they are necessary in a democratic society in order to ensure the rights and freedoms of other persons and values consolidated in the Constitution, if they do not deny the nature and essence of the right of an individual to privacy, and if they are proportionate to the objective sought when this objective may not be attained by any other means. When applying the aforementioned preventive measures, jurisdictional and other law-applying institutions must assess in every case a particular situation, investigate all important circumstances, and find out whether the same objectives may be attained without interfering with the private life of an individual and the privacy of family life and without limiting the human right to privacy more than necessary in order to achieve the said important social and constitutionally justifiable objective.

In order to protect a person from an arbitrary and unlawful restriction on his/her privacy, the preventive measures interfering with the exercise of the human right to private life may be imposed only on the grounds established under the law, only by following the procedure precsribed in the law, and only by providing for the right of a person to file a complaint against an imposed preventive measure with a court.

[…]

… As such, the preventive measures that are aimed at restricting and reducing organised crime should not be considered a constitutionally unreasonable limitation on freedom of movement of a person, as well as the right to freely choose the place of residence in Lithuania and the right to leave Lithuania freely; however,

these provisions are applicable only if they are established by means of a law, if they are necessary in a democratic society in order to protect the values defended and protected by the Constitution, if they do not deny the nature and essence of freedom of movement of a person, as well as the right to freely choose the place of residence in Lithuania and the right to leave Lithuania freely, and if they are proportionate to the sought objective that may not be achieved in any other manner. The jurisdictional and other law-applying institutions, when applying the aforementioned preventive measures, must thoroughly assess in every case the specific situation, must investigate all significant circumstances, must find out whether it is possible to achieve the same objectives without interfering into freedom of movement of a person, the right to freely choose the place of residence in Lithuania, and the right to leave Lithuania freely, without limiting freedom of movement of a person more than necessary in order to achieve the said socially important and constitutionally reasonable objective.

[…]

… it is not permitted to limit the human right to freely choose an occupation or business by preventive measures aimed at preventing organised crime.

The proportionality of responsibility for violations of law; the differentiation (individualisation) of sanctions for violations of law

The Constitutional Court's ruling of 3 November 2005

The constitutional principle of justice requires that established penalties for violations of law (thus, also imposed administrative penalties and monetary fines) be differentiated so that, when applying them, it would be possible to take into consideration the nature of a violation of law, circumstances mitigating responsibility, and other circumstances so that, in view of that, it would be possible to impose a penalty that is milder than the minimum penalty provided for in the sanction (ruling of 26 January 2004).

If a law does not establish differentiated amounts of monetary fines, but rather consolidates considerably high monetary fines of strictly defined amounts, and, if the respective law or other laws provide no possibility of differentiating legal responsibility for the respective violation of law, then, when a monetary fine is imposed, there is no possibility of individualising its amount when taking account of the character, dangerousness (gravity), scale, and other features of a violation of law, as well as of the circumstances mitigating responsibility and of other circumstances (due to which a particular monetary fine would be too high for the violator of law, since it would be disproportionate (inadequate) for a committed violation of law; thus, it would be unjust); such a legal regulation would not be in line with the principles of justice and a state under the rule of law, which are entrenched in the Constitution.

… the constitutional principle of justice, thus, the constitutional principle of a state under the rule of law as well, would also be deviated from if a law consolidated not a monetary fine of a strictly defined amount for violations of law, but such minimum and maximum monetary fines that would permit individualising the amount of an imposed fine to a certain extent, however, notwithstanding this, these monetary fines would be too strict for violators of law just the same, i.e. they would be considerably high and if, in the course of the application of these sanctions – the imposition of monetary sanctions, it would not be permitted to take account of the character, dangerousness (gravity), scale, and other features of a violation of law (due to which a particular monetary fine would be too high for a violator of law, since it would be disproportionate (inadequate) for a committed violation of law; thus, it would be unjust) and to impose on a violator of law a monetary fine that is smaller than the minimum level of the sanction consolidated in the law.

In this context, it needs to be noted that, under Article 109 of the Constitution, in the Republic of Lithuania, justice is administered only by courts (Paragraph 1); when administering justice, judges and courts are independent (Paragraph 2); when considering cases, judges obey only the law (Paragraph 3). … penalties established in laws and the system of such penalties must be such that a court would be able to administer justice when imposing penalties.

The fact of essential importance is that the legislature, by choosing such a way of formulating the sanction – a monetary fine – for the commission of an unlawful act where the article that establishes legal responsibility for the said unlawful act provides for such a monetary fine that is considerably high, i.e. such a sanction that is strict for violators, must, at the same time, by means of a law, establish a legal regulation whereby a court, when applying the sanction for the said unlawful act, could, while imposing a monetary fine, take account of all circumstances mitigating responsibility, including those that are not *expressis verbis* specified in the law, and provided there are such circumstances mitigating responsibility or other circumstances due to which a particular monetary fine would clearly be too high for a violator of law, since it would be disproportionate (inadequate) to the committed violation of law and, thus, unjust, impose on a violator a monetary fine that is smaller than that established in the law.

Under the Constitution, the legislature may not establish any such legal regulation whereby a court that, according to the law, adopts a decision on the imposition of a monetary fine for a violation of law would not be able, in general, by taking account of the character, dangerousness (gravity), the scale, and other features of a violation of law (due to which a particular monetary fine would be too high for a violator of law, since it would be disproportionate (inadequate) for a committed violation of law; thus, it would be unjust) and being guided by the criteria of justice and reasonableness, to individualise the amount of a considerably high monetary fine, i.e. a strict (for violators of law) penalty, and to impose a monetary fine smaller than the minimum monetary fine (lowest level of the sanction) or than the monetary fine of a strictly defined amount established in a law. Thus, the powers of a court would be restricted, i.e. the exceptional powers of a court to administer justice, which are consolidated in Paragraph 1 of Article 109 of the Constitution, would be limited and the preconditions would be created for violating the constitutional rights of subjects, *inter alia*, the constitutional right of persons to a fair trial.

The procedural guarantees for persons held legally liable

The Constitutional Court's ruling of 3 November 2005

… provided the size (severity) of certain sanctions established in laws amounts to criminal punishments, regardless of whether these sanctions may be categorised as belonging to a certain type of legal responsibility (criminal, administrative, disciplinary, or other legal responsibility), and no matter how the respective sanctions are named in laws, laws must necessarily establish for persons who are held legally liable under particular laws the procedural guarantees that stem from the Constitution, *inter alia*, from Article 31 thereof. In this context, it needs to be emphasised that the provisions of Article 31 of the Constitution may not be interpreted as meant only for persons who are held criminally liable.

It is also not permitted to disregard this imperative in the cases where laws establish certain sanctions that, although are referred to as "economic sanctions" in laws, according to their content and other features, should be categorised as belonging to the institution of administrative legal responsibility, but their size (severity) amounts to criminal punishments. In such cases, the said procedural guarantees, which stem from the Constitution, for persons who are held administratively liable may be established in laws that consolidate these sanctions and/or other laws regulating the administrative responsibility of subjects (including economic operators) and the administrative process (*inter alia*, administrative legal proceedings), as well as in laws that regulate the activity of courts or in other laws.

The prohibition on punishing a person twice for the same violation of law *(non bis in idem)* (Paragraph 5 of Article 31 of the Constitution); acts committed repeatedly

The Constitutional Court's ruling of 10 November 2005

Paragraph 5 of Article 31 of the Constitution prescribes: "No one may be punished twice for the same offence."

Paragraph 5 of Article 31 of the Constitution consolidates the principle of *non bis in idem*. This constitutional principle means the prohibition on punishing a person twice for the same unlawful act, i.e. for

the same crime, as well as for the same violation of law that is not a crime (rulings of 7 May 2001 and 2 October 2001).

The aforementioned constitutional principle does not mean that different types of responsibility may not be applied to a person for a violation of law (ruling of 7 May 2001).

As such, the constitutional principle of *non bis in idem* does not deny the possibility of applying more than one sanction of the same type (i.e. where such sanctions are defined by the norms of the same branch of law) to a person for the same violation, i.e. the main and additional punishment or the main and additional administrative penalty.

The constitutional principle of *non bis in idem* also means, *inter alia*, that, if a person who commits an unlawful act is held administratively, but not criminally liable, i.e. he/she is imposed a sanction – a penalty for an administrative violation of law, but not for a crime, he/she must not additionally be held criminally liable for the said act.

It should also be mentioned that the constitutional principle of *non bis in idem* may not be interpreted as meaning that it does not allow prosecuting and punishing a person for a violation of law for which legal prosecution in respect of that person was started, but was later dismissed on the grounds that, according to the procedure established by means of laws, were subsequently declared unreasonable and/or illegal, and the person concerned was not held legally liable – no sanction was applied to (no punishment or penalty was imposed on) him/her.

As such, the exemption of a person from one type of legal responsibility on the grounds and procedure established in laws may not be an obstacle for solving the issue on bringing him/her to legal responsibility of another type on the grounds and procedure established in laws.

… the principle of *non bis in idem*, which is consolidated in the Constitution, does not mean that the institution of repeatedly performed actions may not be consolidated in the legal system; it should also be noted that the institution of repeatedly performed actions also includes such a legal regulation where, in the case of a person who commits the same or a different violation of law defined in the same branch of law, i.e. who violates the same or a different legal norm that, according to the law, belongs to the same branch of law, the circumstance that this violation of law is committed repeatedly (therefore, it shows that such a person tends to disregard legal requirements) is incriminated as a circumstance under which the person for a repeatedly committed violation of law may be brought to other, more severe legal responsibility of the same kind, i.e. another, stricter sanction can be applied to him/her for this violation, i.e. a different, stricter punishment or penalty can be imposed on him/her compared with a person who commits the same act for the first time.

However, it should be emphasised that the constitutional principle of *non bis in idem* does not allow treating repetition (from the discussed aspect) as a circumstance under which the kind of administrative legal responsibility established for certain violations of law may be replaced by criminal responsibility due to the fact that a person who has already been punished by an administrative penalty for a certain violation of law has again committed an administrative violation of law.

[…]

… the legislature, while consolidating (from the discussed aspect) the institution of repeatedly performed acts and paying regard to the Constitution, may choose various ways of formulating a legal text. For instance, laws may lay down such a legal regulation where repetition (from the discussed aspect) is treated as an aggravating circumstance for the respective legal responsibility for a repeatedly committed violation of law, which is formally the same as a former violation, whereas the respective article (part thereof) of the law does not specify a formally different violation of law of the same kind. However, the legislature is not prohibited from legislatively establishing such a legal regulation where repetition (from the discussed aspect) would be treated as a circumstance formally qualifying another violation of law of the same kind (i.e. defined by the norms of the same branch of law) and a repeatedly committed violation of law of the same kind (i.e. the same as the former violation or as another violation that is defined by means of the

norms of law of the same branch) would formally be named in the respective article (part thereof) as another violation of law of the same kind.

Thus, the constitutional principle of *non bis in idem* does not mean that it is not allowed, by means of a law, to establish such a legal regulation whereby, in the event that a person who has already been punished for a violation of law commits the same violation of law again, this violation would be qualified according to another norm of the same branch of law, formally treating such a violation as another violation of law, and another, stricter sanction (compared with a person who commits the same act for the first time) would be imposed on a person who has repeatedly committed the same unlawful act. Such a legal regulation, established by means of a law, where a repeated commission of a violation of law of the same kind (violation of the same or another provision which, according to the law, belongs to law of the same branch) is treated as a circumstance formally qualifying another unlawful act, which determines that the person may be brought to another, stricter legal responsibility, i.e. another, stricter sanction can be applied to him/her for this violation – a different, stricter punishment or penalty may be imposed on him/her compared with a person who commits the same act for the first time, should not be regarded as creating the legal preconditions for punishing a person twice for the same act – a previously committed violation of law.

It should also be emphasised that it is not permitted to establish any such legal regulation whereby, when holding a person legally liable for a repeatedly committed violation of law, repetition (from the discussed aspect) would be treated both as a circumstance formally qualifying another violation of law of the same kind and as a circumstance aggravating the legal responsibility for the said violation of law, which would formally be another violation of law. Such a legal regulation would deviate from the *non bis in idem* principle, which is consolidated in Paragraph 5 of Article 31 of the Constitution.

Establishing legal responsibility for unlawful acts

The Constitutional Court's ruling of 10 November 2005

In a democratic state under the rule of law, the legislature has the right and duty to prohibit by means of laws such acts that may essentially harm people, society, or the interests of the state, or where there might be a threat of such harm to appear (rulings of 8 May 2000, 10 June 2003, and 29 December 2004).

When establishing in laws which acts are unlawful, as well as establishing legal responsibility for unlawful acts, the legislature has broad discretion. This discretion also includes the discretion to establish circumstances that would determine sanctions applicable for violations of law. …

[…]

It should be noted that the constitutional principle of a state under the rule of law would be violated if: (1) legal responsibility were established in a law for such an act that is not dangerous to society; therefore, such an act need not be legally prohibited; (2) a law established such a strict sanction (legal responsibility) for an unlawful act under which a punishment or penalty imposed on a violator would obviously be too harsh, because it would be disproportionate (inadequate) for the committed violation of law; therefore, the said sanction would be unjust; (3) persons who are held liable were not able to make use of certain rights (*inter alia*, the right to the due process of law) that they have according to the Constitution and/or were not able to make use of certain rights that, according to laws, are enjoyed by other persons who are in an analogous situation; in the second case, the constitutional principle of the equality of the rights of persons, thus also Paragraph 1 of Article 29 of the Constitution, would be violated.

In order to prevent illegal acts, it is not always expedient to deem certain acts to be crimes and to impose the most severe measures – criminal punishments – for such acts; every time when it is necessary to decide whether to deem a certain act to be a crime or another violation of law, it is very important to assess what results may be achieved when applying other measures (which are not linked with the application of criminal punishments), *inter alia*, administrative sanctions (ruling of 13 November 1997).

Thus, the legislature, paying regard to the Constitution, *inter alia*, to the imperatives of consistency and internal non-contradiction of the legal system, which arise from the Constitution, may choose by means of

which norms of a particular branch of law to define certain violations of law and what sanctions (criminal, administrative, etc.) to establish for them.

When assessing whether legal responsibility should be categorised as belonging to administrative or criminal law, it should be emphasised that there are a number of similarities between administrative and criminal legal responsibility, though there are also essential differences. The dangerousness of administrative violations of law and criminal acts is not the same; the consequences for holding persons administratively or criminally liable are also different. Administrative penalties may be similar to criminal punishments (ruling of 13 November 1997). However, it should be emphasised that the legislature must seek to achieve the inter-branch compatibility of administrative and criminal sanctions.

The legal situation of persons who are held administratively liable and of those who are held criminally liable must not be the same, because the grounds themselves of this legal responsibility are different: the former have committed administrative violations of law … while the latter have committed crimes or other violations of law that are established in a penal law. As such, the establishment of legal responsibility of various kinds for violations of law may not be the grounds to question the compliance of the respective legal regulation established in laws with the constitutional principles of the equality of rights and a state under the rule of law. Thus, the mere fact that, according to laws, certain unlawful acts are defined as administrative violations of law (even though the severity of administrative penalties established for them amounts to criminal punishments), while other unlawful acts are defined as crimes or other acts violating penal laws, does not mean that the constitutional principles of the equality of the rights of persons and a state under the rule of law are deviated from.

The proportionality of responsibility for violations of law; the differentiation (individualisation) of sanctions for violations of law

The Constitutional Court's ruling of 10 November 2005

When establishing sanctions for violations of law, it is necessary to respect the constitutional principle of a state under the rule of law, *inter alia*, the requirements of reasonableness, justice, and proportionality. The principle of proportionality, which arises from the Constitution, means that the established legal measures must be necessary in a democratic society and suitable for achieving legitimate and universally important objectives sought (there must be a balance between such objectives and measures); the said measures may not restrict the rights of persons more than necessary in order to achieve the said objectives and, if those legal measures are related to the sanctions for a violation of law, in such a case, the aforementioned sanctions must be proportionate to a committed violation of law (rulings of 13 December 2004 and 29 September 2005). It is not permitted to establish for violations of law such punishments or penalties (*inter alia*, such sizes thereof) that would obviously be disproportionate (inadequate) to violations of law and to the purpose of punishments or penalties. Thus, laws must formulate sanctions in such a way that, in the course of their application, it would be possible to take account of the nature of a violation of law and circumstances mitigating responsibility or other circumstances so that a punishment or penalty would not be unjust or inadequate to a committed violation of law.

It should be noted that, as such, the consolidation of strict sanctions (for violators of law) for violations of law (*inter alia*, high monetary fines for administrative violations of law) in laws may not be simply (without assessing the character of a violation of law, its dangerousness (gravity), scale, as well as its other features and circumstances) interpreted as unjust or inadequate to those violations of law.

[…]

An imposed punishment or penalty must be just. According to the Constitution, when imposing a sanction for a violation of law, a court must have the possibility of taking account of all circumstances mitigating responsibility, as well as of those that are not *expressis verbis* established in the law and the possibility of imposing on a violator such a sanction – punishment or penalty – that would be milder than that established in the law. Having chosen such a way of formulating the sanction – a monetary fine – for committing an unlawful act where the article that lays down legal responsibility for the said unlawful act

establishes such a monetary fine that is considerably high, i.e. such a sanction that is strict for violators, the legislature must, at the same time, establish, by means of a law, such a legal regulation whereby a court, when applying the sanction for the said unlawful act, could, while imposing a monetary fine, take account of all circumstances mitigating responsibility, including those that are not *expressis verbis* specified in the law, and provided there are such circumstances mitigating responsibility or other circumstances due to which a particular monetary fine would clearly be too high for a violator of law, since it would be disproportionate (inadequate) to the committed violation of law, thus, unjust, impose on a violator a monetary fine that is smaller than that established in the law, i.e. a monetary fine that is smaller than the minimum monetary fine (lowest level of the sanction) or the fine of a strictly determined amount that is established in the law (rulings of 10 June 2003 and 3 November 2005). The imposition of a smaller monetary fine than that established in the law must not be the rule, but an exception – it can be imposed by a court only under such special circumstances mitigating responsibility or in such other circumstances where the disregard of which would lead to the imposition of a fine in the amount established in the law where the said fine would obviously be unjust. A court, when imposing fines smaller than those established in the law, must do that especially attentively and carefully in order not to violate the interests of a person, society, and the state.

The procedural guarantees for persons held legally liable

The Constitutional Court's ruling of 10 November 2005

… provided the size (severity) of certain sanctions established in laws amounts to criminal punishments, regardless of whether these sanctions may be categorised as belonging to a certain type of legal responsibility (administrative, disciplinary, or other legal responsibility), and no matter how the respective sanctions are named in laws, laws must necessarily establish, for persons who are held legally liable under particular laws, the procedural guarantees that stem from the Constitution, *inter alia*, from Article 31 thereof, the provisions of which may not be interpreted as meant only for persons who are held criminally liable (ruling of 3 November 2005). The said procedural guarantees, which arise from the Constitution, are the independence and impartiality of a court, the presumption of innocence, the prohibition on compelling persons to give evidence against themselves, or their family members or close relatives, the application of a sanction (imposition of a punishment or penalty) only on the basis of a law, the prohibition on punishing a person twice for the same unlawful act *(non bis in idem)*, the right of a person to defence from the moment of detention or the first interrogation, the right to have an advocate, the principle of adversarial argument during a trial, the right of a person with no knowledge of Lithuanian to participate in judicial actions through a translator, etc.

The prohibition on punishing a person twice for the same violation of law *(non bis in idem)* (Paragraph 5 of Article 31 of the Constitution)

The Constitutional Court's ruling of 21 January 2008

… the constitutional principle of *non bis in idem* does not prohibit applying to a person the prohibition sanction – a preventive measure – together with another administrative penalty.

Thus, as such, the constitutional principle of *non bis in idem* does not deny the possibility of imposing more than one sanction on a person for the same violation of law. It is possible to answer whether the respective legal regulation violates the said constitutional principle only upon assessing the nature of violations of law for which the respective sanctions are established, as well as socially significant objectives that are sought by the legislature. The fact whether a certain administrative penalty (or punishment) established under the law is assigned to the main or additional categories, or whether it is not assigned to any of these categories, is of no significance from the aspect of the compliance of the respective legal regulation with the constitutional principle of *non bis in idem*, because the division of administrative

penalties (as well as punishments) into main and additional ones stems not from the Constitution, but from a law, i.e. from ordinary law.

The proportionality of responsibility for violations of law; the differentiation (individualisation) of sanctions for violations of law

The Constitutional Court's ruling of 21 January 2008

The Constitutional Court has held that the constitutional principles of justice and a state under the rule of law also imply that the measures established by the state for violations of law must be proportionate (adequate) to the violation of law, they must be in line with the legitimate and generally important objectives sought, they may not restrain a person clearly more than necessary in order to reach these objectives; there must be a fair balance (proportionality) between the pursued objective to punish the violators of law and to ensure the prevention of the violations of law and the measures chosen for reaching this objective; the constitutional principle of justice requires that established penalties be differentiated so that, when applying them, it would be possible to take account of the nature of a violation of law, circumstances mitigating responsibility, and other circumstances, so that, in view of that, it would be possible to impose a penalty that is milder than the minimum penalty provided for in the sanction, etc.; monetary fines established in laws for violations of law must be of such an amount that is necessary in seeking the legitimate and socially significant objective – to ensure that laws are observed and that established duties are carried out (rulings of 6 December 2000, 2 October 2001, 26 January 2004, 3 November 2005, and 10 November 2005).

The powers of a court in considering cases of administrative violations of law

The Constitutional Court's ruling of 28 May 2008

When considering a case of an administrative violation of law, a court (judge) must objectively and impartially investigate, verify, and assess the data (evidence) present in the case of the commission of an administrative violation of law and must adopt a fair decision regarding the guilt of a person who is accused of committing this violation of law. It needs to be noted that such situations are also possible where, during the consideration of a case in a court, such circumstances come to light that are important in order to adopt a fair decision, but which were not established by the person who drew up the administrative law violation protocol, or where the material submitted to a court is not sufficient in order to adopt a fair decision. In such case … a court (judge), when seeking to objectively and comprehensively investigate all circumstances of a case and to establish the truth in it, has the powers to perform the necessary procedural actions, since the administration of justice may not depend only on what material is submitted to a court. … when performing procedural actions, a court must act in such a way that would not create any preconditions for doubting its impartiality or independence.

It needs to be noted that the powers of a court (judge) to collect evidence when considering the case of an administrative violation of law certainly do not mean that persons who draw up administrative law violation protocols are exempted from the duty to collect evidence.

Crimes; the obligation of the state to ensure effective protection against criminal attempts; criminal responsibility for criminal acts

The Constitutional Court's ruling of 8 June 2009

The Constitutional Court has held the following on more than one occasion:

– the striving for an open, just, and harmonious civil society and a state under the rule of law, which is consolidated in the Preamble to the Constitution, implies that it is obligatory to try to ensure the safety of every individual and all society from criminal attempts against them (rulings of 8 May 2000 and 16 January 2006);

– crimes are violations of law that especially grossly violate human rights and freedoms, as well as other values protected and defended by the Constitution, make negative impact on the living conditions and the

subsistence level of people, and are detrimental to the foundations of the life of the state and society (rulings of 8 May 2000, 29 May 2004, and 16 January 2006);

– one of the means for protecting human rights and freedoms, as well as other constitutional values, is criminal responsibility for criminal acts (rulings of 10 June 2003 and 4 July 2003);

– the mission of the state as the political organisation of all society is to ensure human rights and freedoms and to guarantee the public interest; therefore, while exercising its functions and acting in the interests of all society, the state has the obligation to ensure the effective protection of human rights and freedoms, other values protected and defended by the Constitution, every person and all society against, *inter alia*, criminal attempts (rulings of 29 December 2004 and 16 January 2006);

– if the state fails to take proper actions in order to prevent crimes, the trust in state authority and laws would be destroyed and disrespect for legal order and various social institutions would increase. Therefore, according to the Constitution, the state as the organisation of all society, which must guarantee the public interest, has not only the right, but also the duty to take various lawful measures in order to prevent crimes, as well as to restrict and reduce crime (rulings of 8 May 2000 and 16 January 2006);

– the measures, established and applied by the state, for preventing crimes, as well as restricting and reducing crime, must be effective (rulings of 8 May 2000 and 16 January 2006);

– in a state under the rule of law, the legislature has the right and, at the same time, the duty to prohibit, by means of laws, such acts by which essential harm is inflicted on the interests of persons, society, or those of the state, or if a threat occurs where, due to such acts, the said damage will be inflicted; laws define which acts are considered crimes and establish punishments for committing such acts; by threatening with criminal punishments, laws protect individuals and society from criminal attempts against them and establish the grounds for punishing persons who commit crimes in order to correct them (rulings of 8 May 2000, 10 June 2003, and 16 January 2006);

– the legislature, when regulating the relationships connected with the establishment of criminal responsibility for criminal acts, has broad discretion; in view of the nature, dangerousness (gravity), scale, and other features of criminal acts, as well as in view of other significant circumstances, it may, *inter alia*, consolidate a differentiated legal regulation and establish different legal responsibility for particular criminal acts. However, this discretion of the legislature is not absolute: the legislature must pay regard to the norms and principles of the Constitution, *inter alia*, the imperatives of regularity and inner consistency of the legal system, which arise from the Constitution (ruling of 16 January 2006).

Criminal responsibility of legal persons

The Constitutional Court's ruling of 8 June 2009

… the Constitution does not *expressis verbis* prescribe that only a natural person may be a subject of criminal responsibility and that a legal person may not be a subject of such responsibility.

… the specificity of a legal person is determined, *inter alia*, by the fact that, having legal capacity and capability, a legal person is a participant of legal relationships through natural persons (its head, an authorised representative, etc.). … the activity of a legal person is inseparable from the activity of particular natural persons through which such a legal person acts and without the activity of which the activity of such a legal person would be essentially impossible. … when establishing criminal responsibility of a legal person, the legislature must also take account of the aforementioned specificity of a legal person as a subject of legal relationships. The specificity of a legal person also determines the particularities of the application of certain legal institutions of criminal law to legal persons. In this context, it also needs to be noted that, due to such specificity of a legal person (compared with a natural person), it is not allowed to apply, to a legal person, certain norms of criminal law that are established for natural persons.

Thus, the specificity of a legal person as a subject of legal relationships is determined by the fact that [the law] may establish a differentiated legal regulation linked with the criminal responsibility of a natural person and a legal person. However, in this context, it needs to be noted that, when also regulating criminal

responsibility of legal persons, the legislature must pay regard to the norms and principles of the Constitution, *inter alia*, those consolidated in Article 31 thereof.

[…]

… under the Constitution, *inter alia*, Article 31 thereof, as well as according to the principle of a state under the rule of law, the legislature, when regulating the relationships connected with the criminal responsibility of a legal person, must establish such a legal regulation that a court, when deciding the question of the criminal responsibility of a legal person, *inter alia*, the question of the imposition of a punishment on such a legal person, could take account of all circumstances, *inter alia*, the circumstances that increase or decrease the dangerousness of a criminal act committed by that legal person. In this context, it needs to be noted that the specificity of a legal person as a subject of legal relationships (*inter alia*, the fact that a legal person has an independent structure and is a participant of legal relationships through certain natural persons) also implies that a law may also recognise such circumstances as circumstances increasing or decreasing the dangerousness of a criminal act committed by a legal person that, normally, may not be regarded as circumstances increasing or decreasing the dangerousness of a criminal act committed by a natural person. For instance, the dangerousness of a criminal act committed by a legal person may be determined by the policy, strategy, organisational culture, etc. of the activity of a legal person. For example, the dangerousness of a criminal act committed by a legal person is assessed in one way when the policy of the activity of a legal person and its organisational structure are targeted in order that the said legal person could not act criminally, while it is assessed in a different way when the strategy of the activity of a legal person and its internal procedures create the preconditions for that legal person to act in a criminal manner (or are even oriented in order that the said legal person would act in a criminal manner), when such a legal person recognises the results of a criminal act committed for its benefit *ex post facto*, etc.

It also needs to be noted that the existence or non-existence of the said circumstances in a criminal act committed by a legal person may be of crucial importance for the exemption of such a legal person from criminal responsibility.

[…]

The specificity of a legal person as the subject of a criminal act, i.e. the fact that it is an independent subject of legal relationships having legal capacity and capability, independent name, and organisational integrity, that its property is separated from the property of its participants, but also that it is a participant of legal relationships through the natural persons who act on its behalf, also implies the specificity of its guilt. The guilt of a legal person must be linked with the guilt of a natural person who acts for the benefit or in the interests of the said legal person. …

Punishment may be imposed or applied only on the grounds established by law (Paragraph 4 of Article 31 of the Constitution)

The Constitutional Court's ruling of 8 June 2009

… Paragraph 4 of Article 31 of the Constitution, according to which punishment may be imposed or applied only on the grounds established by law, means, *inter alia*, that, under the Constitution, the legislature has the duty to establish, by means of a law, which acts are crimes, as well as criminal responsibility for such acts. By establishing which acts are crimes, as well as criminal responsibility for them, the legislature is bound by the principles of natural justice and proportionality, which are established in the Constitution, and by other requirements found in a state under the rule of law. Under the Constitution, the legislature may specify by means of a penal law only such acts as crimes where the said acts are really dangerous and by which huge harm is inflicted on the interests of persons, society, and those of the state. Paragraph 4 of Article 31 of the Constitution, according to which punishment may be imposed or applied only on the grounds established by law, also means that the legislature must establish punishments for criminal acts and sizes of such punishments only by means of a law; punishments must be established for each criminal act. The principle of natural justice consolidated in the Constitution implies that punishments established by means of a penal law must be just. The constitutional principles of justice and a state under the rule of law

mean, *inter alia*, that the measures that are applied by the state must be adequate to the objective sought. Thus, punishments must be adequate to the criminal acts for which they are established; it is not permitted to establish such punishments and their sizes for criminal acts that would obviously be inadequate to a criminal act and the purpose of a punishment. Punishments and their sizes must be differentiated in a penal law when taking account of the dangerousness of criminal acts (ruling of 10 June 2003) …

The prohibition on punishing a person twice for the same violation of law *(non bis in idem)* (Paragraph 5 of Article 31 of the Constitution)

The Constitutional Court's ruling of 8 June 2009

When interpreting the constitutional principle consolidated in Paragraph 5 of Article 31 of the Constitution … it needs to be noted that the principle of *non bis in idem* means that it is prohibited to punish twice the same person for the same criminal act; however, this constitutional principle does not deny the possibility of holding criminally liable two or more persons whose guilt is proved.

… when holding a natural person criminally liable for having committed an act that was committed by the said natural person, who has certain defined features, and a legal person that is recognised guilty of the fact that the said natural person with certain defined features committed a criminal act for the benefit (or in the interests) of the legal person, two different subjects – a natural person and a legal person – are held criminally liable for one act. Therefore, a natural person and a legal person, as subjects of criminal responsibility, may not be equated one with the other.

Establishing administrative responsibility for dangerous acts

The Constitutional Court's ruling of 28 May 2010

… the Constitution does not prohibit defining, by means of a law, administrative violations of law – acts that are less dangerous than criminal acts – and establishing administrative responsibility for such acts. Only those acts that are less dangerous than criminal acts and by which damage is inflicted on the interests of a person, society, or the state may be declared, by means of a law, administrative violations of law.

Under the Constitution, the legislature, when regulating the relationships connected with the establishment of administrative responsibility for committing administrative violations of law, has broad discretion; *inter alia*, it may, taking account of the nature, dangerousness, and other features of administrative violations of law, as well as of other important circumstances, consolidate a differentiated legal regulation and establish different administrative responsibility for particular administrative violations of law. However, this discretion of the legislature is not absolute: while doing so, the legislature must pay regard to the norms and principles of the Constitution, *inter alia*, the constitutional principle of a state under the rule of law, as well as the principle of the equality of the rights of persons, which is consolidated in the Constitution, *inter alia*, Article 29 thereof.

[…]

… the legislature, when regulating the relationships connected with administrative responsibility for committing administrative violations of law, *inter alia*, when imposing limitations on the administrative responsibility of some subjects for committing administrative violations of law, must pay regard to the imperatives, arising from Article 29 of the Constitution, that legal responsibility for the same administrative violations of law must be established by means of a law and applied to all persons, save the exceptions provided for in the Constitution.

In this context, it also needs to be noted that, under the Constitution, it is only the President of the Republic who has immunity not only from criminal, but also from administrative responsibility: while in office, he/she may be neither detained nor held criminally or administratively responsible (Paragraph 1 of Article 86 of the Constitution). In its ruling of 8 May 2000, the Constitutional Court held that the legal status of the President of the Republic as the Head of State is an individual one and is different from that of the rest of citizens.

Under the Constitution, the members of the Seimas, ministers, and judges also have partial immunity from certain administrative measures: the members of the Seimas may not be held criminally liable or be detained, or have their liberty restricted otherwise, without the consent of the Seimas (Paragraph 2 of Article 62 of the Constitution); the Prime Minister, ministers, and judges may not be held criminally liable or be detained, or have their liberty restricted otherwise, without the prior consent of the Seimas or, in the period between the sessions of the Seimas, without the prior consent of the President of the Republic (Article 100 and Paragraph 2 of Article 114 of the Constitution).

It needs to be noted that, under the Constitution, any other persons, *inter alia*, servicemen and statutory state servants (officials), do not have any immunity from administrative responsibility.

Differentiating criminal responsibility

The Constitutional Court's ruling of 4 June 2012

The legislature may, taking account of the nature, dangerousness (gravity), scale, and other features of criminal acts, as well as other significant circumstances, consolidate a differentiated legal regulation and establish different legal responsibility for particular criminal acts. However, this discretion of the legislature is not absolute: the legislature must pay regard to the norms and principles of the Constitution (rulings of 16 January 2006 and 8 June 2009), *inter alia*, the principles of natural justice and proportionality, other requirements of the principles found in a state under the rule of law, as well as the principle of the equality of rights, which is enshrined in Article 29 of the Constitution.

The principle of natural justice, which is consolidated in the Constitution, implies that punishments established in a penal law must be just; punishments and their sizes must be differentiated in a penal law when taking account of the dangerousness of criminal acts (rulings of 10 June 2003 and 8 June 2009). The dangerousness of criminal acts is determined, *inter alia*, by the values that are infringed upon by these acts.

[…]

It needs to be noted that, when establishing criminal responsibility for criminal acts, the legislature has the discretion to differentiate the said responsibility, taking into account family relationship (and the degree thereof) between a person who committed a criminal act and the one who suffered from that act.

[…]

The life of an individual, the inviolability of his/her person, close family relationships, family, motherhood, fatherhood, and childhood are constitutional values; the constitutional principle of a state under the rule of law implies the discretion of the legislature to establish that persons who attempt on the life and health of their close relatives or family members are subject to strict criminal family relationship, which would be differentiated by taking account, *inter alia*, of the dangerousness of such an attempt.

The powers of a court to individualise penalties imposed for administrative violations of law

The Constitutional Court's ruling of 25 September 2012

In its jurisprudence, the Constitutional Court has expressed its position more than once that a court, when taking account of the significant circumstances of a case, must have the possibility of individualising strict penalties consolidated in the law and imposing a penalty that is smaller than the minimum one provided for in the sanction or a penalty softer than the one provided for under the law (rulings of, *inter alia*, 26 January 2004, 3 November 2005, 10 November 2005, 21 January 2008, and 17 September 2008).

… under the Constitution, *inter alia*, Paragraph 1 of Article 109 thereof and the constitutional principle of a state under the rule of law, the law by which the administrative legal responsibility of persons is established may not consolidate such a legal regulation (penalties, their sizes) whereby a court, when taking account of all circumstances significant for a case, would not be allowed to individualise a strict penalty imposed on a concrete person for a concrete violation of law. By means of a legal regulation, it is necessary to create the legal preconditions for a court to investigate all circumstances significant for a case and to adopt a just decision. Conversely, a legal regulation may not be such that a court would not be allowed, when

taking account of all circumstances significant for a case and by following law, without violating the imperatives of justice and reasonableness, which arise from the Constitution, to adopt a just decision and, thus, to administer justice. Otherwise, the powers of a court to administer justice, which arise from the Constitution, *inter alia*, Article 109 thereof, would be violated and the constitutional concept of a court as the institution that administers justice in the name of the Republic of Lithuania, as well as the constitutional principle of a state under the rule of law, would be deviated from.

It should also be noted that, when individualising penalties imposed on infringers, courts must thoroughly assess, in concrete situations, the dangerousness of a violation of law for human rights and freedoms, as well as the interests of society and the state. The situations where it is allowed to impose a penalty for administrative violations of law that is smaller than the minimum one provided for in the sanction, or to impose a softer penalty than provided for in the sanction, or not to impose an administrative penalty at all, must be exceptional and related to the statement of the existence of exceptional circumstances.

The duty of the state to ensure the safety of the public and public order; the powers of the legislature to establish the conditions and procedure for the entry of weapons and ammunition into civilian circulation and for holding and using them, as well as for issuing and withdrawing permits to acquire a weapon

The Constitutional Court's ruling of 25 January 2013

… the Constitutional Court has noted that, under the Constitution, the institutions of state power and governance are under the obligation to ensure the safety of the public and public order, to protect a person against any attempt on his/her life and health and to defend human rights and freedoms. Weapons and ammunition may be a danger to public order and the safety of the public, to human life and health; therefore, the legislature, when taking account of the necessity to ensure public order and the safety of the public and to protect human rights and freedoms, is empowered to establish the conditions and procedure for the entry of weapons and ammunition into civilian circulation and for holding and using them, as well as for issuing permits to acquire a weapon (ruling of 12 April 2001).

It needs to be noted that weapons and ammunition may be a danger not only to a person possessing weapons and ammunition himself/herself, but to other members of the public, as well as to public order; therefore, the legislature has the duty to establish such conditions and procedure for the entry of weapons and ammunition into civilian circulation and for holding and using them, as well as for issuing and withdrawing permits to acquire a weapon, that would create the preconditions for protecting a person possessing weapons and ammunition, as well as other members of the public, against a possible threat and to ensure public order. When fulfilling the said duty and while exercising broad discretion, the legislature is under the obligation to observe the Constitution; *inter alia*, when establishing the measures limiting the right to acquire and possess the respective weapons and ammunition, which are granted to a person under the conditions and procedure consolidated under the law, the legislature is obliged to pay regard to the principle of proportionality.

The prohibition on compelling persons to give evidence against themselves, or their family members or close relatives (Paragraph 3 of Article 31 of the Constitution)

The Constitutional Court's ruling of 12 April 2013

Paragraph 3 of Article 31 of the Constitution prescribes: "It shall be prohibited to compel anyone to give evidence against himself, or his family members or close relatives."

[…]

The Constitutional Court, when interpreting the guarantee consolidated in Paragraph 3 of Article 31 of the Constitution, held that the provision of the Constitution in question is, in substance, related to the particularities and legal situation of a natural person as a subject of legal relationships (ruling of 8 June 2009).

The guarantee consolidated in Paragraph 3 of Article 31 of the Constitution means that a natural person may refuse to give evidence on the basis of which this person himself/herself, his/her family member or close relative could be brought to criminal responsibility, as well as to another type of legal responsibility, if a possible sanction by its nature and size (severity) amounted to a criminal punishment. The legal regulation established in Paragraph 3 of Article 31 of the Constitution may not, however, be interpreted as meaning that a natural person may not voluntarily (i.e. without anybody compelling him/her) give evidence against himself/herself, his/her family members or close relatives (ruling of 8 June 2009).

[…]

When interpreting Paragraph 3 of Article 31 of the Constitution in conjunction with Article 23, it should be noted that an individual, enjoying the guarantee consolidated in Paragraph 3 of Article 31, is not allowed, *inter alia*, not to comply with the duties established by means of laws for him/her as the owner of an object of ownership.

Establishing criminal responsibility for international crimes

The Constitutional Court's ruling of 18 March 2014

… 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.

Punishment may be imposed or applied only on the grounds established by law (Paragraph 4 of Article 31 of the Constitution)

The Constitutional Court's ruling of 18 March 2014

Paragraph 4 of Article 31 of the Constitution prescribes: "Punishment may be imposed or applied only on the grounds established by law." Thus, the principle of *nulla poena sine lege*, which is consolidated in the said provision of the Constitution, means that no person may be punished for an act that was not punishable by law at the time when it was committed.

It should be noted that the said principle also stems from the constitutional principle of a state under the rule of law. As the Constitutional Court noted in its rulings of 13 December 2004 and 16 January 2006, when law is applied, *inter alia*, it is necessary to observe the following requirements arising under the constitutional principle of a state under the rule of law: responsibility (sanction, punishment) for any violations of law must be established in advance *(nulla poena sine lege)*; no act is criminal unless it is defined as such by means of a law *(nullum crimen sine lege)*.

Thus, it should be noted that the constitutional principle of a state under the rule of law integrates the following two interrelated principles …: *nulla poena sine lege* and *nullum crimen sine lege*.

[…]

… in view of Paragraph 1 of Article 135 of the Constitution and the striving for an open, just, and harmonious civil society and a state under the rule of law, as expressed through the constitutional principle of a state under the rule of law, the principle of *nullum crimen, nulla poena sine lege*, which is consolidated in Paragraph 4 of Article 31 of the Constitution and stems from the constitutional principle of a state under the rule of law, is not absolute. Under the Constitution, criminal laws may provide for an exception to the said principle, which would be applicable to crimes established under international law or the general principles of law, *inter alia*, the crime of genocide as defined under the universally recognised norms of international law (i.e. the crime of genocide directed exclusively against national, ethnical, racial, or religious

groups); only in that way, regard would be paid to the requirement, which stems from Paragraph 1 of Article 135 of the Constitution and is linked with the striving for an open, just, and harmonious civil society and a state under the rule of law, as expressed through the constitutional principle of a state under the rule of law, that the criminal laws of the Republic of Lithuania related to responsibility for international crimes would not establish any such standards that would be lower than those established under the universally recognised norms of international law. This requirement and, thus, also the principle of *nullum crimen, nulla poena sine lege*, which is consolidated in Paragraph 4 of Article 31 of the Constitution and stems from the constitutional principle of a state under the rule of law, would be disregarded if criminal laws laid down a retroactive effect on the crimes defined exclusively under national law.

[…]

… under the Constitution, as well as under the universally recognised norms of international law, the exception to the principle of *nullum crimen, nulla poena sine lege* is also applicable to deliberate actions that are considered to constitute genocide, i.e. deliberate actions aimed at destroying a significant part of any national, ethnical, racial, or religious group that has an impact on the survival of an entire protected group, comprising certain social or political groups.

It should also be noted that, under the Constitution, as well as under the universally recognised norms of international law, the exception to the principle of *nullum crimen, nulla poena sine lege*, which permits the retroactivity of the criminal laws establishing criminal responsibility for crimes recognised under international law or the general principles of law, is also applicable to crimes against humanity and war crimes, which may be directed, *inter alia*, against certain social or political groups of people.

Establishing the period of the application of criminal responsibility

The Constitutional Court's ruling of 27 June 2016

The Constitutional Court has also held that, when defining criminal acts by means of laws and establishing criminal responsibility for such acts, the legislature has also the discretion to establish the time limits within which criminal responsibility may be applied to persons who commit criminal acts; establishing such time limits, the legislature must take into account, *inter alia*, the nature and dangerousness (gravity) of a criminal act; such criteria may also determine such a legal regulation to the effect that no time limits are applied as regards criminal responsibility for the gravest crimes (ruling of 18 March 2014).

… under the Constitution, the legislature has the discretion to establish various models of calculating the time limits during which criminal responsibility could be applied to persons who committed criminal acts. For instance, it is allowed to establish absolute time limits or they may be related to certain circumstances, for example, filing a charge. When establishing such time limits, the legislature must pay regard to the requirement, which stems from the Constitution, *inter alia*, Paragraph 2 of Article 31 thereof, that such preconditions must be created for a court considering a criminal case that it could act in a way that would make it possible to establish the truth in the criminal case and the issue of the guilt of a person accused of committing a crime would be decided in a fair manner.

… the Constitution, *inter alia*, Paragraphs 1 and 2 of Article 31 thereof, and the constitutional principle of a state under the rule of law imply the duty of the legislature, when regulating criminal procedure relationships in cases where the time limits during which criminal responsibility may be applied to persons who committed criminal acts have expired, to balance the constitutional values – the presumption of innocence and the right of a person to the due court process. The legislature is under the duty to establish such a legal regulation that would create the preconditions for ensuring that a court decision adopted after the time limits during which criminal responsibility may be applied to persons who committed criminal acts have expired would solve the issue of whether the accused person was reasonably charged with committing a criminal act in order to drop the charge in the case where a court decision does not recognise that a person is guilty of having committed a criminal act.

[…]

… during a pretrial investigation, justice is not administered … a pretrial investigation involves collecting and assessing information that is necessary for deciding whether public charges must be brought against a person and a criminal case must be referred to a court. Consequently, the termination of a pretrial investigation upon the expiry of statutory limitation periods for criminal responsibility means that, within the prescribed periods, no necessary data has been collected to bring charges against a certain person and that there are no grounds to believe that the accused has committed a crime.

It should also be noted that, as mentioned before, the Constitution, *inter alia*, Paragraphs 1 and 2 of Article 31 thereof, and the constitutional principle of a state under the rule of law imply the duty of the legislature, when regulating criminal procedure relationships in cases where the time limits during which criminal responsibility may be applied to persons who committed criminal acts have expired, to lay down such a legal regulation that would create the preconditions for ensuring that a charge is dropped in the case where such a charge is not confirmed. Consequently, in cases where, upon the expiry of statutory limitation periods, it is ascertained that charges brought against the accused for having committed a crime were unfounded, a court must deliver an acquittal.

Establishing criminal responsibility for criminal acts

The Constitutional Court's ruling of 15 March 2017

When regulating the relationships related to the establishment of criminal responsibility for criminal acts, the legislature has broad discretion; in view of the nature, dangerousness (gravity), scale, and other characteristics of criminal acts, as well as in view of other significant circumstances, it may, *inter alia*, lay down a differentiated legal regulation and establish different legal responsibility for the respective criminal acts. However, this discretion of the legislature is not absolute: the legislature must pay regard to the norms and principles of the Constitution, *inter alia*, the imperatives of the consistency and internal non-contradiction of the legal system, which stem from the Constitution (rulings of 16 January 2006, 8 June 2009, and 18 March 2014).

… under the Constitution, the criminalisation of concrete acts and the differentiation of criminal responsibility for them is, first of all, a matter of the criminal policy pursued by the state, which is decided by the legislature while exercising its wide discretion and taking into account the dangerousness and scale of the said acts, the priorities of crime prevention, as well as other significant circumstances, but without violating the Constitution and the imperatives arising from the Constitution. Thus, even though the legislature must, in every concrete case, assess the expediency of declaring a concrete act to be a criminal one by assessing, at the same time, what results may be achieved by means of other measures, the mere existence of doubts as to the expediency of criminalising a certain act or as to the effectiveness of such a legal regulation does not give grounds for questioning the compliance of this legal regulation with the Constitution, unless it transpires that the said legal regulation, already at the time of its consolidation in legal acts, was clearly directed against the welfare of the Nation and the interests of the State of Lithuania and its society, and clearly denied the values consolidated, defended, and protected by the Constitution.

The legal regulation of the imposition and execution of sentences; the suspension of the execution of sentences

The Constitutional Court's ruling of 18 March 2020

… under the Constitution, *inter alia*, the constitutional principle of a state under the rule of law, taking into account the dangerousness and scale of criminal acts, the priorities of crime prevention, and other significant circumstances, the legislature has broad discretion to decide issues of the criminal policy pursued by the state, *inter alia*, issues of the criminalisation of specific acts and the differentiation of criminal responsibility, among other things, to establish a legal regulation governing the imposition and execution of sentences. In doing so, the legislature must respect, *inter alia*, the requirements, arising from the constitutional principles of a state under the rule of law and justice, that the penal system established in the criminal law is harmonious, stable, and balanced, that such sentences and their lengths for criminal acts are

established that are commensurate with the criminal act and the purpose of the penalty, and that sentences and their lengths are differentiated according to the dangerousness of the criminal acts. In this context, it should be noted that the legal regulation establishing the system of penalties in the criminal law may not be changed by taking into account only the attitude developed in society over a certain period of time to certain criminal acts.

… under the Constitution, *inter alia*, Paragraph 2 of Article 31 and Paragraph 1 of Article 109 thereof, and the constitutional principle of a state under the rule of law, when exercising its broad discretion to decide issues of the criminal policy pursued by the state, the legislature must, by means of a legal regulation laid down in the criminal law, create the preconditions for a court, by taking into account all the circumstances of the case, to impose a fair sentence on the person who has committed a criminal act, *inter alia*, in exceptional cases, to impose a less severe sentence than that provided for under the law; the criminal law may also provide for the possibility for the court to suspend the execution of the imposed sentence, where this is justified having regard to the gravity of the committed criminal act, the personality of the guilty person, the circumstances mitigating his/her criminal responsibility, and other circumstances.

[…]

Thus, under the Constitution, *inter alia*, Paragraph 2 of Article 31 and Paragraph 1 of Article 109 thereof, and the constitutional principle of a state under the rule of law, the legislature has the right to provide for the possibility of suspending the execution of sentences imposed for certain criminal acts, *inter alia*, those that are most serious under the criminal law, but it is not obliged to do so.

The conditions for issuing and withdrawing permits to acquire and possess weapons (ammunition)

The Constitutional Court's ruling of 5 June 2020

… under the Constitution, *inter alia*, the constitutional principle of a state under the rule of law, implementing its duty to establish the conditions and procedure for issuing and withdrawing permits to acquire weapons and ammunition, in order to create the preconditions for ensuring public order and the security of society and protecting human rights and freedoms, the legislature may lay down such measures for limiting the right, acquired under the conditions and in accordance with the procedure laid down by the law, to acquire and possess weapons and ammunition whereby persons having been convicted for committing a criminal act would not be issued permits to acquire weapons and ammunition for a certain period of time specified by the legislature, while the issued permits would be withdrawn. It should also be noted that such a legal regulation must create the possibility of assessing, to the extent possible, the individual situation of each person and, in view of all the important circumstances, refusing to issue a permit to acquire weapons and ammunition to a person having committed a criminal act if, even after the expiry of the time period set by the legislature, this person continues posing a threat to the security of society and public order. In addition, such a legal regulation under which persons having committed certain particularly serious crimes, for which the most severe penalties are provided for, may never be issued permits to acquire certain weapons and ammunition would also be in line with the Constitution, *inter alia*, with the constitutional principle of proportionality.

The conditions for granting the right to drive a vehicle; the sanctions of prohibiting the exercise of the right to drive a vehicle

The Constitutional Court's ruling of 24 July 2020

… under the Constitution, *inter alia*, the constitutional principle of a state under the rule of law, ensuring traffic safety, *inter alia*, road traffic safety, is the public interest. Therefore, the legislature must establish such traffic safety requirements that are necessary to ensure public order and the security of society, as well as human life and health, *inter alia*, it must establish the respective requirements for road users; among others, such requirements must also be laid down for persons seeking to acquire the right to drive vehicles

that are related to, *inter alia*, their age, health condition, the knowledge of traffic safety rules, the ability to drive vehicles, and the behaviour of these persons. When establishing such requirements, the legislature must take into account, *inter alia*, the danger to traffic safety caused by road users under the influence of alcohol or drugs, as well as by road users committing gross and/or systematic violations of traffic rules. Thus, under the Constitution, *inter alia*, the constitutional principle of a state under the rule of law, in order to ensure traffic safety, the legislature may establish such a legal regulation on granting the right to drive vehicles under which this right would not, for a certain period of time, be granted to persons who have committed the gravest violations of traffic rules, *inter alia*, who have repeatedly driven vehicles under the influence of alcohol or drugs or who have systematically grossly violated traffic rules.

… under the Constitution, *inter alia*, the constitutional principle of a state under the rule of law, the law may establish sanctions of various types (administrative, criminal), *inter alia*, sanctions of prohibition, for the violations of law committed, *inter alia*, by road users under the influence of alcohol or drugs, as well as for gross and/or systematic violations of traffic rules; such sanctions of prohibition, *inter alia*, include the deprivation of the right to drive vehicles for a certain period of time.

It should be emphasised that, when establishing both the conditions for granting the right to drive vehicles and the sanctions of prohibiting the exercise of this right, the legislature must respect the imperatives of the consistency and coherence of the legal system, which arise from the constitutional principle of a state under the rule of law, the requirements of reasonableness, justice, and proportionality, as well as the principle of *non bis in idem*, enshrined in Paragraph 5 of Article 31 of the Constitution.

3.2. CRIMINAL PROCEEDINGS

The administration of justice in criminal cases (Paragraph 1 of Article 109 of the Constitution)

The Constitutional Court's ruling of 8 May 2000

Paragraph 1 of Article 109 of the Constitution prescribes: "In the Republic of Lithuania, justice shall be administered only by courts."

The Constitutional Court notes that this provision in criminal procedure law means that a person may not be held guilty of having committed a crime, nor may he/she be subject to a criminal punishment otherwise than by a court judgment and under the law. Performing this function, a court must, during a trial, investigate the circumstances of a case comprehensively, thoroughly, and objectively and decide the case on its merits. It is only a court that may declare a person guilty and impose a punishment on him/her (Paragraph 1 of Article 31 of the Constitution).

Requirements for the laws governing criminal proceedings

The Constitutional Court's ruling of 19 September 2000

Criminal procedure laws must provide for such a procedure of criminal proceedings that would create the preconditions for the speedy and thorough detection of crimes and persons that committed them, for imprisoning guilty persons and, by applying penal laws properly, punishing them justly. An innocent person may not be held criminally liable and convicted.

In establishing the procedure for holding persons criminally liable and for imposing penalties for committed crimes, laws must also provide for the protection of the rights of a person charged with having committed a crime. In its 11 May 1999 ruling, the Constitutional Court noted that, "when guaranteeing the protection of the rights of individuals, it is necessary to pay regard to the fundamental principles of a state under the rule of law; such principles require that jurisdictional and other law-applying institutions be impartial and independent, that they seek to establish the objective truth, and that they adopt their decisions only on the grounds of law. This is possible only if the proceedings are public, the parties to the proceedings have equal rights, and the legal disputes, in particular those regarding the rights of a person, are decided by ensuring that a particular person has the right and possibility of defending those rights. In a state under the

rule of law, the right of individuals to defend their rights is unquestionable". Thus, a person may not be declared guilty of having committed a crime, nor any criminal punishment may be imposed on a person without proper court proceedings enabling the accused to be aware of everything with which he/she is charged and on what grounds the accusations against him/her are founded, as well as allowing him/her to prepare and present evidence for his/her defence. This must be ensured by means of criminal procedure norms, which must be in conformity with the constitutional principles of lawfulness, the equality before the law and the court, the impartiality of courts and judges, and those of the public and fair consideration of cases. The participants of trials – the accuser, the accused, counsel for the defence, the victim and his/her representative, the civil plaintiff and the civil respondent and their representatives – must be guaranteed, by means of laws, the equal rights to present evidence, to take part in the investigation into evidence, and to submit pleas. Cases must be considered on the basis of the principle of adversarial argument.

Granting anonymity to witnesses and victims

The Constitutional Court's ruling of 19 September 2000

The Constitution consolidates the protection of human rights, i.e. human life (Article 19), the inviolability of the human person (Article 21), the inviolability of property (Article 23), etc. Thus, a witness or a victim who gives his/her testimony must be properly protected by measures established in laws from any unlawful influence.

At the same time, it is in the interest of society and the state that the case of any indicted person is investigated in a fair manner. The Constitution guarantees that a person charged with committing a crime will have the right to a public and fair hearing of his/her case (Paragraph 2 of Article 31). Such a person must have the right to defend himself/herself from the charge. If the personal identity data of a witness or a victim are made secret, the implementation of the right of the accused to defence becomes more complex. This means that the norms of criminal procedure laying down the procedure for granting anonymity to witnesses and victims and that for the presentation of their testimony must balance the aforementioned rights.

The Constitutional Court notes that the anonymity of witnesses and victims is permissible only as an exceptional measure in cases where it is necessary to ensure their security and where the procedure for questioning anonymous witnesses and victims in a court hearing and the consideration and use of their evidence neither limit nor deny the constitutional right of an indicted person to defence or a fair investigation of a case.

Requirements for the legal regulation governing criminal proceedings; the constitutional general model of criminal proceedings and exceptions to this model

The Constitutional Court's ruling of 16 January 2006

The obligation of the state, which stems from the Constitution, to ensure the security of each person and all society against criminal attempts implies not only the right and duty of the legislature to define criminal acts and establish criminal responsibility for them by means of laws, but also its right and duty to regulate the relationships connected with the detection and investigation of criminal acts and with the consideration of criminal cases, i.e. its right and duty to regulate criminal procedure relationships. Criminal procedure relationships must be regulated by means of a law in such a way that the legal preconditions would be created in order to speedily detect and thoroughly investigate criminal acts, to punish justly the persons who committed criminal acts (or, on the basis of the law, to decide the issue of their criminal responsibility otherwise), as well as that the legal preconditions would be created in order to ensure that no one who is innocent is punished. It is necessary to seek to ensure the protection of the rights of persons who suffered from criminal acts and to avoid any unreasonable restriction of the rights of persons who committed criminal acts. The legal regulation of criminal proceedings should not create any preconditions for delaying investigations into criminal acts and considering criminal cases, nor should it create any preconditions for participants of criminal proceedings for abusing their procedural or other rights. Otherwise, the constitutional

obligations of the state to ensure by means of legal measures the security of each person and all society and the implementation of the legal order based on the constitutional values would become more difficult.

[…]

When regulating, by means of a law, criminal procedure relationships, the legislature has rather broad discretion. For instance, the legislature may establish, by means of a law, different types of criminal proceedings, as well as the particularities of criminal proceedings in the investigation of certain criminal acts and/or in the consideration of the criminal cases of individual categories, *inter alia*, different rules of pretrial investigation of certain criminal acts, the particularities of the legal status of the participants of criminal proceedings, etc.

However, when implementing the said discretion, the legislature must pay regard to the norms and principles of the Constitution, *inter alia*, the provisions of the Constitution … that consolidate the equality of the rights of persons, the right to apply to a court, the right to a fair and impartial court, the independence of judges and courts when they administer justice, the duty of a judge to suspend the consideration of a case when he/she applies to the Constitutional Court, as well as the constitutional status of prosecutors.

For instance, as held by the Constitutional Court, the legal regulation of criminal proceedings must be based on the constitutional principles of lawfulness, the equality before the law and the court, the presumption of innocence, public and fair hearings of cases, the impartiality and independence of courts and judges, the separation of the functions of a court and other state institutions (officials) that participate in criminal proceedings, the guarantee of the right to defence, as well as on other principles (rulings of 5 February 1999, 8 May 2000, and 19 September 2000).

When the relationships of criminal procedure are regulated, it is also necessary to pay regard to the fact that the Constitution provides for the institutions of pretrial investigation, the consideration of criminal cases in a court, and upholding charges on behalf of the state in criminal cases. These constitutional institutions imply the following general constitutional model of criminal proceedings: a pretrial investigation and the consideration of a criminal case in a court are different stages in criminal proceedings; during a pretrial investigation, the necessary information is collected and assessed in order to decide whether the pretrial investigation must be continued and whether, after it has been completed, the respective criminal case must be referred to a court; in addition, the said information is collected and assessed in order to consider a case referred to a court and to resolve it in a fair manner; charges on behalf of the state are upheld in the course of considering a case in a court.

As such, the constitutional consolidation of the said general model of criminal proceedings does not eliminate the possibility of regulating criminal procedure relationships in a way that, in certain cases (especially when account is taken of the nature, dangerousness (gravity), scale, other characteristics of criminal acts, and other important circumstances), a pretrial investigation is not conducted and/or charges on behalf the state are not upheld in a court. Thus, the Constitution also does not prevent the legislative consolidation of such types of criminal proceedings that differ more or less from the general constitutional model of criminal proceedings. However, such types of criminal procedure should be treated as exceptions to the general constitutional model of criminal proceedings; their establishment must be constitutionally justifiable.

The right of access to a court in criminal proceedings (i.e. the right of persons to defend their rights in a court if they believe that their rights are violated because of a criminal act) (Paragraph 1 of Article 30 of the Constitution)

The Constitutional Court's ruling of 16 January 2006

… the obligation of the state, which arises from the Constitution, to protect each person and all society against criminal attempts and the right of a person to the due process of law imply the right of each person to defend his/her rights in a court if he/she believes that his/her rights are violated because of a criminal act, as well as the duty of the state to ensure an effective mechanism of implementing this right of a person. The legislature has rather broad discretion in this sphere: the legislature can provide for the grounds according to

which an investigation into a criminal act is launched, for the subjects (institutions) that launch an investigation into a criminal act, etc. … the legislature, while regulating the relationships of criminal procedure and taking account of the nature, dangerousness (gravity), scale, other characteristics of criminal acts, as well as other significant circumstances, may consolidate such a legal regulation where an application (petition, statement, complaint, etc.) from a victim (or his/her representative) concerning a criminal act serves as sufficient grounds for commencing an investigation into such a criminal act. However, by establishing such a legal regulation, the legislature must not create any legal preconditions for denying the state obligation, which arises from the Constitution, *inter alia*, from the principle of a state under the rule of law, to protect each person and all society against criminal attempts, or any legal preconditions for artificially or unreasonably burdening the implementation of the right of a person to defend his/her rights in a court.

… the constitutional right of a person to apply to a court does not mean that the legislature cannot establish in procedural laws, *inter alia*, in the laws that regulate criminal procedure relationships, a certain procedure for applying to a court and certain formal requirements that must be complied with by applications filed with courts. It also needs to be noted that the constitutional right of a person to apply to a court also does not preclude the legislature from establishing formal requirements applicable to the application of a person subsequent to which an investigation into a criminal act or the consideration of a criminal case in a court can be commenced. As such, the establishment of such formal requirements does not mean that the constitutional right of a person to apply to a court has been artificially restricted or that the implementation of this right has been burdened unreasonably. However, when regulating the procedure for applying to a court and while establishing certain requirements that must be met by an application filed with a court, *inter alia*, the requirements applied to an application to a court subsequent to which an investigation into a criminal act or the consideration of a criminal case in a court is commenced, the legislature may not establish any such a legal regulation whereby the implementation of a certain constitutional right or legitimate interest of a person, *inter alia*, the right of a person to judicial protection, would be burdened unreasonably or its implementation would become impossible altogether. Otherwise, the Constitution would be violated, *inter alia*, the right of a person to judicial protection, as consolidated in Paragraph 1 of Article 30 of the Constitution, the right of a person and society, as stems from the principle of a state under the rule of law, to safety from criminal attempts, and the right of a person to the due process of law, would be infringed.

… under the Constitution, the legislature must regulate, by means of laws, criminal procedure relationships in such a way that the subjects of criminal procedure relationships who believe that their rights have been violated would have the right to defend their rights in a court regardless of their legal status in criminal proceedings. Otherwise, the preconditions would be created for violating the constitutional right of a person to judicial protection, thus, also Paragraph 1 of Article 30 of the Constitution.

In this context, it should also be noted that the legislature, when regulating criminal procedure relationships, may also establish such a legal regulation that would not allow any person to abuse the constitutional right to apply to a court where there are no grounds for such an application.

The powers of a court in criminal proceedings (Paragraph 1 of Article 109 of the Constitution)

The Constitutional Court's ruling of 16 January 2006

Under the Constitution, *inter alia*, Article 109 thereof, and under the principles of a state under the rule of law and justice, in the course of criminal proceedings, a court has the duty to make use of all possibilities in order to establish the objective truth in a criminal case and to adopt a just decision in respect of a person who is accused of committing a criminal act. Such a duty also applies to a court of first instance. The Constitutional Court has held that, in criminal procedure law, the provision of Paragraph 1 of Article 109 of the Constitution, whereby justice is administered only by courts, means that, *inter alia*, during a trial, a court of first instance, when carrying out this function, must thoroughly, fully, and objectively investigate all circumstances of a criminal case and decide the case on its merits (ruling of 5 February 1999).

[…]

… the necessity to protect the rights and legitimate interests of a person, also the fact that a court is a state institution that, when administering justice, helps the state to ensure the security of a person and all society from criminal attempts, determine certain powers of a court in criminal proceedings. In criminal proceedings, a court must be an impartial arbiter, who objectively assesses the data (evidence) in a criminal case regarding the circumstances of committing a criminal act and who adopts a fair decision concerning the guilt of a person accused of having committed the said criminal act; at the same time, in order to establish the objective truth, a court must take an active part in criminal proceedings – a court must define the limits of the consideration of a criminal case, must perform certain procedural actions, must ensure that persons participating in court proceedings do not abuse their rights or powers, and must resolve other issues related to the consideration of a criminal case in a court. While considering a criminal case, a court must act in such a way that the objective truth is established in a criminal case and the question of the guilt of a person accused of having committed a criminal act is fairly resolved. A court must also be equally just to all persons who participate in criminal proceedings.

Thus, the norms and principles consolidated in the Constitution, *inter alia*, the right of persons to a public and fair hearing of their case by an independent court, as consolidated in Paragraph 2 of Article 31 of the Constitution, as well as the principles of a state under the rule of law and justice, imply the model of a court as an institution administering justice where a court may not be understood as a "passive" observer of court proceedings and where the administration of justice may not depend solely on the material submitted to a court. Seeking to investigate all circumstances of a case objectively and comprehensively and to establish the truth in a case, a court has the powers either to perform procedural actions by itself or to assign certain institutions (officials), *inter alia*, the prosecutors, that they perform such actions.

The necessity, which arises from the Constitution, to follow the principles and norms of criminal procedure law in the course of investigating criminal cases

The Constitutional Court's ruling of 16 January 2006

The constitutional right to a fair trial and to the due court process, when interpreted in the context of other provisions of the Constitution, means that, *inter alia*, during court proceedings, when a criminal case is investigated, the principles and norms of criminal proceedings must be followed (ruling of 10 June 2003).

The necessity, which arises from the Constitution, to follow the principles and norms of criminal procedure law in the course of investigating criminal cases does not mean that it is allowed to disregard other legal norms and principles, which do not belong to the criminal procedure, but which can be significant during the consideration of a certain criminal case. It should especially be emphasised that the duty to pay regard to the principles and norms of criminal procedure law during the consideration of a criminal case may not be interpreted as permitting raising the principles and norms of criminal procedure law or those of criminal proceedings above the principles and norms of the Constitution, or as permitting interpreting the principles and norms of criminal procedure law or those of criminal procedure in such a manner that the meaning of the provisions of the Constitution would be denied, distorted, or ignored, or as permitting opposing the principles and norms of criminal procedure law or those of criminal law, on the one hand, and the general principles of law, on the other hand. In the course of considering criminal cases, regard must be paid to the principles of justice, honesty, reasonableness, proportionality, lawfulness and other general principles of law, as for example *res iudicata*, *nemo iudex in propria causa*, *audiatur et altera pars*, *ubi ius ibi remedium*, *onus probandi*, *impossibilium nulla obligatio est*, etc. Regard must also be paid to the canons of the interpretation of law.

The powers of a court in criminal proceedings to assign the conduct of a pretrial investigation or the performance of separate procedural actions

The Constitutional Court's ruling of 16 January 2006

It has been mentioned that a pretrial investigation and the consideration of a criminal case in a court are different stages in criminal proceedings; that, as such, the constitutional consolidation of the said general

model of criminal proceedings does not eliminate the possibility of regulating criminal procedure relationships in a way that, in certain cases (especially when account is taken of the nature, dangerousness (gravity), scale, other characteristics of criminal acts, and other important circumstances), a pretrial investigation is not conducted; that the Constitution also does not prevent the legislative consolidation of such types of criminal proceedings that differ more or less from the general constitutional model of criminal proceedings; however, the establishment of any exceptions to this model must be constitutionally justifiable.

However, it is not permitted to oppose the constitutional general model of criminal procedure, under which a pretrial investigation and the consideration of a criminal case in a court are different stages of criminal proceedings, and such types of criminal proceedings where a pretrial investigation is not conducted. … it needs to be noted that such legal situations are possible where, during the consideration of a criminal case in which no pretrial investigation was conducted, the issue of the necessity to conduct a pretrial investigation or to perform certain procedural actions arises.

The obligation of a court, which arises from the Constitution, to establish the objective truth and to solve a case justly implies that, if a court considers that, without a pretrial investigation or certain procedural actions where the conduct of such investigation or the performance of such actions in a court is impossible, it will not be able to examine a criminal case justly or to adopt a just decision (for example, because the information held by the court is insufficient, contradictory, etc.), the court must have the powers to decide that a pretrial investigation must be conducted or separate procedural actions must be performed in the respective case and certain subjects must be given instructions as appropriate; such court instructions must be compulsory to all persons (officials, institutions) to whom they are addressed.

A court decision to assign the conduct of a pretrial investigation and a court decision to assign the performance of separate procedural actions give rise to different legal effects.

In the case where a court decides to assign the conduct of a pretrial investigation, under the Constitution, the respective criminal case must be referred to the prosecutor – the official specified in Article 118 of the Constitution – with the exception of whom, under the Constitution, no one else can organise and direct a pretrial investigation. When organising and/or controlling a pretrial investigation upon the instruction of a court, the prosecutor must ensure that the instruction is carried out properly and on time and he/she acts as an *amicus curiae*. When a court adopts the decision to assign the conduct of a pretrial investigation, the consideration of the criminal case in a court is suspended until the pretrial investigation is over and, if there is the respective decision, until an indictment with the case material is referred to the court.

In the course of interpreting how instructions must be given in cases where a court decides to assign the performance of separate procedural actions (performance of which in a court is impossible), it needs to be noted that, in such a case, the legislature, under the Constitution, has broad discretion: it may establish, *inter alia*, a procedure according to which instructions to perform separate procedural actions are given and the respective institutions (officials) to which such court instructions are given. It needs to be noted that a court may also assign the establishments (officials) of pretrial investigation to perform separate procedural actions; this may not be interpreted as meaning that thereby a court directs a pretrial investigation. A law may also establish such a legal regulation under which a court has the powers to impose the obligation on prosecutors to exercise control over how such court instructions are performed. In cases where a court decides to assign certain officials or institutions to perform separate procedural actions, but not a whole pretrial investigation, the respective criminal case remains in that court.

When regulating the criminal procedure relationships connected with the court powers to give the said instructions, the legislature must pay regard to the Constitution, *inter alia*, the principles of a state under the rule of law, justice, and the separation of powers.

The Constitution, *inter alia*, the principles of a state under the rule of law, justice, and the separation of powers, which are consolidated therein, imply that a court, when giving the said instructions, must act in such a manner that would create no grounds to believe that the court is partial. In this context, it should be underlined that a court, when giving instructions to conduct a pretrial investigation or to perform separate

procedural actions (performance of which in a court is impossible), may not indicate how such an instruction must be carried out, or what result is expected, etc.

[…]

Under the Constitution, the legislature must establish such a legal regulation under which it would be possible to ensure that the said instructions of a court (judge) are executed on time and properly.

The powers of a prosecutor to institute criminal proceedings concerning such acts for which persons are held liable only when there is an application filed by a victim (Paragraph 2 of Article 118 (wording of 20 March 2003) of the Constitution)

The Constitutional Court's ruling of 15 June 2006

… the provision of Paragraph 2 of Article 118 of the Constitution, under which, in cases established under the law, prosecutors defend the rights and legitimate interests of the person, society, and the state, gives rise to the duty of the legislature to establish such a legal regulation that a prosecutor could and would have to defend the rights and legitimate interests of persons, society, and the state in reality: in all cases when the rights or legitimate interests of persons, society, or the state are violated, or when attempts are made to violate them, the effective defence and protection of such rights and legitimate interests, *inter alia*, against criminal attempts, must be ensured (ruling of 16 January 2006).

[…]

… the legislature has the discretion to stipulate that for certain criminal acts a person is held liable only in the case where there is an application (request, statement, complaint, etc.) of a victim (or his/her representative) concerning a criminal act, and that, in such cases, a pretrial investigation is not carried out and a prosecutor does not uphold charges on behalf of the state in a court (ruling of 16 January 2006); however, also in such cases, a prosecutor (who, under the Constitution, must, in cases provided for by means of laws, defend the rights and legitimate interests of persons, society, and the state) must, if it is provided for under the law, institute criminal proceedings even if there is no application (request, statement, complaint, etc.) of a victim (or his/her representative) concerning the respective criminal act; the said duty of a prosecutor to institute criminal proceedings is linked with the public importance of the respective act and/or to the fact that this act violated the rights of a person who, due to important reasons, cannot defend his/her rights and legitimate interests. The legislature may also establish, by means of a law, such a legal regulation that, for certain criminal acts, a person is held liable only in cases where there is an application (request, statement, complaint, etc.) of a victim (or his/her representative) concerning a criminal act, but a pretrial investigation is carried out in such a case, and the prosecutor upholds charges on behalf of the state in a court; in such a situation, the legislature may also establish the cases where a prosecutor must institute criminal proceedings, even though there is no application (request, statement, complaint, etc.) of a victim (or his/her representative); such a duty of a prosecutor is also linked with the public importance of the respective criminal act and/or to the fact that this act violated the rights of a person who, due to important reasons, cannot defend his/her rights and legitimate interests.

Summing up, it must be noted that, in all cases where criminal responsibility arises on the grounds of an application (request, statement, complaint, etc.) of a victim (or his/her representative) concerning a criminal act, the institution of a pretrial investigation and/or the emergence of criminal responsibility are linked with the fact how the respective criminal act or damage inflicted by it is assessed by a person whose rights and legitimate interests were violated; it is obvious that there is some subjectivity in such assessment. While the duty of a prosecutor to institute criminal proceedings concerning the said criminal acts (i.e. such acts for which a person is held liable only in cases where there is an application (request, statement, complaint, etc.) of a victim (or his/her representative)), the institution of a pretrial investigation and/or the emergence of criminal responsibility are related to the fact that the respective criminal act is of public importance or that this act violated the rights and legitimate interests of a person who, due to important reasons, cannot defend his/her rights and legitimate interests; even though in some of such cases, the

decisions of a prosecutor, based on the assessment of all important circumstances, may depend on various factors, under the Constitution, the prosecutor has no discretion in this field. In this context, it should be emphasised that, as held by the Constitutional Court, the powers of prosecutors as state officials may not be defined in legal acts as their subjective right, which they can implement at their own discretion, i.e. such a right that they may use or may decide not to use; such powers are also duties that prosecutors not only may, but also must carry out if there are conditions for such duties established in laws (ruling of 16 January 2006).

[…]

… it needs to be emphasised that, under Paragraph 2 of Article 118 of the Constitution, prosecutors defend the rights and legitimate interests of persons, society, and the state namely in cases established by law; it has been mentioned that this provision gives rise to the duty of the legislature to establish such a legal regulation that a prosecutor could and would have to defend the rights and legitimate interests of persons, society, and the state in reality. … the said provision implies such a legal regulation whereby the cases where a prosecutor has the powers to institute criminal proceedings must clearly be defined in the law.

The principle of the equality of persons in criminal procedure law and in criminal law

The Constitutional Court's ruling of 8 June 2009

… when criminal procedure relationships are regulated, regard must be paid to the constitutional principle of the equality of the rights of persons; the constitutional principle of the equality of the rights of persons must be followed in passing laws and in their implementation, as well as in the administration of justice; under the Constitution, the legal regulation must be such that participants in criminal proceedings who have the same procedural status (victims, persons suspected of committing criminal acts, the accused, witnesses, counsel for the defence, etc.) would be treated equally (ruling of 16 January 2006).

In this context, it also needs to be noted that the constitutional principle of the equality of rights must also be respected in cases where a law regulates the questions linked with the subjects of criminal responsibility. At the same time, it also needs to be noted that certain objective differences of subjects of criminal responsibility may also determine a differentiated legal regulation of their criminal responsibility. However, when establishing a differentiated legal regulation, regard must be paid to the norms and principles of the Constitution.

The right of access to a court in criminal proceedings (Paragraph 1 of Article 30 of the Constitution)

The Constitutional Court's ruling of 7 April 2011

Under the Constitution, *inter alia*, Paragraph 1 of Article 30 thereof, in regulating criminal procedure relationships, the constitutional right of a person to apply to a court may not be violated in any respect; the legislature must, by means of law, regulate criminal procedure relationships in such a way that the subjects of criminal procedure relationships who believe that their rights are violated would have the right to defend their rights in a court regardless of their legal status in criminal proceedings; the legislature, when regulating criminal procedure relations, may also establish such a legal regulation that would not allow any person to abuse the constitutional right to apply to a court where there are no grounds for such an application (ruling of 16 January 2006).

… the legislature may establish various models for consideration of the complaints of persons participating at the stage of a pretrial investigation, *inter alia*, the ones who have suffered from a criminal act, or complaints regarding the actions or decisions of a prosecutor; however, the established legal regulation may not deny the constitutional right of such persons to apply to a court, *inter alia*, regarding the violation of their rights during a pretrial investigation. Under Paragraph 1 of Article 30 of the Constitution, a law must provide for the right of persons participating at the stage of a pretrial investigation, *inter alia*, the ones who have suffered from a criminal act, to file a complaint against the procedural actions and decisions of a prosecutor, *inter alia*, the refusal to institute a pretrial investigation in cases where such a refusal violates their rights.

It also needs to be noted that, under Paragraph 1 of Article 30 of the Constitution, when regulating the possibility for persons participating at the stage of pretrial investigation, *inter alia*, the ones who have suffered from a criminal act, to file a complaint against the actions and decisions relating to a pretrial investigation in criminal proceedings, the legislature may establish such a procedure under which it would be possible to file, with a higher court, a complaint against a court decision regarding the ruling of a prosecutor to refuse to institute a pretrial investigation. In doing so, the legislature must pay regard to the norms and principles of the Constitution.

A legal regulation governing procedural coercive measures applicable in criminal proceedings

The Constitutional Court's ruling of 17 February 2016

… under the Constitution, implementing the duty of the state to ensure that every person and all society are protected from criminal attempts and taking account of its own obligation to regulate relationships in criminal proceedings, the legislature must, by means of a law, provide for such procedural coercive measures applicable in criminal proceedings that would enable the speedy disclosure and thorough investigation of criminal acts and would prevent new criminal acts. The law must establish such a procedure for applying the said measures that would ensure the protection of the rights of a person against whom such measures are applied, *inter alia*, that would create the preconditions for that person to defend his/her rights in a court in cases where his/her rights have been violated as a result of the application of these measures.

[…]

… when a procedure governing the application of procedural coercive measures in criminal proceedings is established in a law, regard must also be paid to the constitutional principle of proportionality: these measures must be applied only where they are aimed at the speedy disclosure and thorough investigation of criminal acts, or at preventing new criminal acts; such measures must be necessary to reach the aforesaid objectives and must not restrict the rights or freedoms of a person against whom the said measures are applied clearly more than necessary in order to reach the said objectives.

[…]

… the Constitution, *inter alia*, the constitutional principle of a state under the rule of law, gives rise to the right of a person to the due and fair process of law in criminal proceedings; the said right implies, among other things, an active role of the subjects authorised to adopt decisions on procedural coercive measures applicable in criminal proceedings, *inter alia*, an active role of a court as an institution administering justice, in ensuring the protection of the rights of a person against whom the said measures are applied in criminal proceedings.