4. THE STATE AND ITS INSTITUTIONS

4.1. THE CONCEPT AND MISSION OF THE STATE

The concept and mission of the state

The Constitutional Court's ruling of 13 December 2004

The state is the organisation of all society (rulings of 25 November 2002, 4 March 2003, 30 September 2003, 3 December 2003, and 30 December 2003). The state, whose power covers all its territory, is the political organisation of all society; the mission of the state is to ensure human rights and freedoms and to guarantee the public interest (ruling of 30 December 2003). The imperative of social harmony is consolidated in the Constitution (rulings of 14 January 2002, 3 December 2003, and 5 March 2004). The state, when carrying out its functions, must act in the interests of all society (ruling of 4 March 2003). In order to guarantee the public interest of the entire national community – the civil Nation, the state must ensure that public administration is carried out and that public services are provided.

The performance of state functions

The Constitutional Court's ruling of 13 December 2004

The state performs its functions through the system of particular establishments, which comprise, first of all, state institutions; the state may also perform its functions to a certain extent through other (non-state) institutions, which are assigned (entrusted) according to laws with performing particular state functions, or which participate in performing state functions in particular forms and manner defined in laws. When stipulating, by means of a law, that particular functions to a certain extent may be performed not through the state, but other institutions, it is necessary to pay regard to the principles and norms of the Constitution.

The mission of the state to guarantee the public interest

The Constitutional Court's ruling of 21 September 2006

The Constitution consolidates the state as the common good of all society (rulings of 25 May 2004 and 19 August 2006). The mission of the state as a political organisation of all society is to ensure human rights and freedoms and to guarantee the public interest (rulings of 30 December 2003, 13 December 2004, 29 December 2004, and 16 January 2006). Each public interest may only be based on the fundamental social values that are consolidated, protected, and defended by the Constitution; the consolidation and guarantee, as well as the defence and protection, of such an interest are constitutionally reasoned. It has been held in the jurisprudence of the Constitutional Court that the implementation of the public interest, as an interest of society, which is recognised by the state and is protected by law, is one of the most important conditions of the existence and evolution of society itself (rulings of 6 May 1997 and 13 May 2005). On the other hand, the public interest, as a common interest of the state, all society or part of society, must be balanced with autonomous interests of individuals, because not only the public interest, but also the rights of persons are constitutional values (rulings of 6 May 1997 and 13 December 2004). These values – the protection and defence of the rights and legitimate interests of persons, and the public interest – which are consolidated in the Constitution, may not be opposed. A just balance must be ensured in this sphere.

At the same time, it needs to be noted that not any legitimate interest of a person or a group of persons should be regarded as a public interest, but only such that reflects and expresses the fundamental values consolidated, protected, and defended by the Constitution; these are, *inter alia*, the openness and harmony of society, the rights and freedoms of a person, the rule of law, etc. It is such an interest of society or part thereof that must be ensured and served by the state when it performs its functions, *inter alia*, such an interest must be ensured and served through courts, which decide cases under their competence.

Thus, every time when the question arises whether a certain interest should be considered a public one, it must be possible to reason that, without satisfying a certain interest of a person or a group of persons, certain values consolidated, protected, and defended by the Constitution would be violated. In situations where a decision on whether a certain interest has to be considered public and defended and protected as a public interest must be adopted by a court that considers a case, and it is necessary to reason such a decision in the respective court act. Otherwise, there would arise a reasonable doubt that what is protected and defended by a court as a public interest actually is not a public, but a private interest of a certain person.

It should be emphasised that the public interest is dynamic and subject to change (ruling of 8 July 2005). On the other hand, it is a very varied one. In fact, it impossible to say *a priori* in which areas of life, concerning which legal disputes may arise or wherein the need may arise to apply law, threats for the public interest may occur or the need may arise to ensure the public interest by means of interference by public power institutions or officials.

The *raison d'être* of the state

The Constitutional Court's ruling of 24 September 2009

The Constitutional Court has held on more than one occasion that the state is the organisation of all society (rulings of 25 November 2002, 4 March 2003, 30 September 2003, 3 December 2003, and 30 December 2003). In its acts, the Constitutional Court has also held that: having adopted by referendum the Constitution, the highest-ranking legal act, the Lithuanian Nation formed the standardised basis for the common life of its own, as the national community – the civil Nation, and consolidated the state as the common good of all society; the Constitution is based on universal, unquestionable values, *inter alia*, respect for law and the rule of law, a limitation on the scope of powers, the duty of state institutions to serve the people and their responsibility for society, justice, striving for an open, just, and harmonious society and a state under the rule of law, as well as the recognition of and respect for human rights and freedoms (rulings of 25 May 2004 and 19 August 2006). In the Constitutional Court's ruling of 19 August 2006, it was also held that one of the most important obligations of a democratic state based on law and justice is to respect, defend, and protect the values, as well as human rights and freedoms, upon which the Constitution itself adopted by the Nation is based and whose actual consolidation, defence and protection is the *raison d'être* of the state itself; otherwise, it would not be possible to regard the state as the common good of all society.

4.2. STATE INSTITUTIONS

State institutions and their system

The Constitutional Court's ruling of 13 December 2004

The system of state institutions comprises very diverse state institutions. The diversity of state institutions, their legal status and powers are determined by a variety of functions performed by the state, the particularities of managing the general affairs of society, the organisational and financial capacity of the state, the content and expediency of the policy implemented during a concrete period of life of society and the development of the state, international obligations of the state, as well as other factors. The Seimas, which has the constitutional powers to establish and liquidate state institutions, as well as to establish their legal status and powers, is bound by the Constitution.

It is worth emphasising that the notion "state institutions" is employed in the Constitution (Article 8, Paragraph 1 of Article 29, Paragraph 1 of Article 61, Item 5 of Article 67, and Paragraph 1 of Article 104 of the Constitution). The Constitution also mentions "institutions of control" (Paragraph 3 of Article 73 of the Constitution), a "special institution of judges, as provided for by law", which advises the President of the Republic on the appointment, promotion, and transfer of judges or their release from duties (Paragraph 5 of Article 112 of the Constitution), "institutions of state power and governance" (Paragraph 1 of Article 114 of the Constitution), and "self-government institutions" (Paragraph 3 of Article 119 of the Constitution). In the Constitution, the notion "institution" also has a broader meaning: it also denotes the name of non-

governmental institutions in regard to which particular restrictions, similar to those *expressis verbis* established in regard to the state and/or its institutions (Paragraph 2 of Article 44 and Paragraph 4 of Article 89 of the Constitution), are established in the Constitution.

When systematically interpreting the aforementioned formulations of the Constitution, it is obvious that the notion "state institutions" is of a general type and it comprises various state institutions through which the state performs its functions. It has been mentioned that state institutions comprise a system. This system of state institutions is consolidated in legal acts of diverse legal force. Some state institutions are *expressis verbis* specified in the Constitution. Other state institutions, according to the Constitution, must be established by means of a law. The need to establish any other state institutions originates from the necessity to implement state governance, to administer national affairs, and to ensure the performance of various state functions – state institutions must be organised in order to perform such functions, although their establishment is not explicitly provided for in the Constitution.

Various state institutions are *expressis verbis* specified in the Constitution: the Seimas; the President of the Republic; the Government; the Constitutional Court; the Supreme Court, the Court of Appeal, regional and district courts; Seimas Ombudsmen; the National Audit Office; the Bank of Lithuania; the State Defence Council; the Commander of the Armed Forces; the Office of the Prosecutor General; the Central Electoral Commission. Some state institutions are consolidated in the Constitution without specifying their exact names: ministries; security service; a special institution of judges, as provided for by law, which advises the President of the Republic on the appointment, promotion, and transfer of judges or their release from duties; territorial prosecutor's offices; the representatives of the Government, who supervise whether municipalities observe the Constitution and laws and whether they execute government decisions. The institutions that may be founded by means of laws adopted by the Seimas are also provided for in the Constitution: institutions of control; establishments of the Government; specialised courts established for the consideration of administrative, labour, family, and cases of other categories.

The institutions executing state power (Paragraph 1 of Article 5 of the Constitution)

The Constitutional Court's ruling of 13 December 2004

Some state institutions are treated in the Constitution as state institutions that execute state power. They are specified in Paragraph 1 of Article 5 of the Constitution, which states that, in Lithuania, state power is executed by the Seimas, the President of the Republic and the Government, and the judiciary. The relations between the Seimas (executing legislative power), the President of the Republic and the Government (institutions of executive power), and the judiciary (executing judicial power) are based on the constitutional principle of the separation of powers.

The Seimas, the representation of the Nation, executes legislative power and is the only legislative institution in Lithuania. The Constitution directly provides that the Seimas has the powers to establish certain state institutions by law. According to Item 5 of Article 67 of the Constitution, the Seimas establishes state institutions provided for by law, and appoints and releases their heads. When interpreting the legal regulation established in Article 67 of the Constitution, the Constitutional Court has held that the said item means, *inter alia*, that the Seimas has the powers to provide in a law for the state institutions the heads of which are appointed and released by the Seimas itself, and that the Seimas has the powers to appoint and release the heads of such institutions (ruling of 24 January 2003).

The foundations of the system of the institutions of executive power, as well as the powers of the supreme institutions of executive power, are established in the Constitution. The constitutional order of the State of Lithuania is based on the model of dual executive power: the executive power in Lithuania is exercised by the President of the Republic – the Head of State and by the Government.

The President of the Republic is part of executive power (rulings of 10 January 1998, 21 December 1999, and 30 December 2003). Article 77 of the Constitution provides that the President of the Republic is the Head of State (Paragraph 1); he/she represents the State of Lithuania and performs everything with which he/she is charged by the Constitution and laws (Paragraph 2). The President of the Republic,

implementing the powers vested in him/her, issues acts-decrees (Article 85 of the Constitution). It should be emphasised that, under Item 2 of Article 94 of the Constitution, the Government executes, *inter alia*, the decrees of the President of the Republic.

The Government is a collegial institution of executive power (ruling of 10 January 1998). Article 91 of the Constitution provides that the Government of the Republic of Lithuania consists of the Prime Minister and ministers; under Paragraph 1 of Article 98 of the Constitution, ministers, *inter alia*, head their respective ministry. According to Item 3 of Article 94 of the Constitution, the Government coordinates the activities of the ministries and other establishments of the Government. The Constitution specifies only one position of a minister – the Minister of National Defence (Paragraph 1 of Article 140 of the Constitution); therefore, according to the Constitution, the Ministry of National Defence may not be absent in Lithuania. When interpreting the legal regulation established in Item 3 of Article 94 of the Constitution, in its ruling of 23 November 1999, the Constitutional Court held that the Constitution does not reveal what establishments are considered "establishments of the Government"; moreover, the Constitution does not specify what legal status of the aforementioned government establishments is. It is the legislature exercising the discretion in this area (limited by the Constitution) that must establish this. On the other hand, certain government institutions are specified in the Constitution; for example, the institution of the representative of the Government, which has the power to supervise whether municipalities observe the Constitution and laws, and whether they execute the decisions of the Government, is consolidated in Paragraphs 2 and 3 of Article 123 of the Constitution. In this context, it should also be mentioned that Paragraph 1 of Article 123 of the Constitution provides that, at higher-level administrative units, governance is organised by the Government according to the procedure established by law; thus, the legislature has the duty not only to establish higher-level administrative units, but also to provide for the government institutions through which the Government would organise governance at higher-level administrative units.

It should be mentioned that the powers of the President of the Republic and those of the Government, as two branches of dual executive power, are autonomous and independent of each other. On the other hand, the Constitution *expressis verbis* specifies such powers of the President of the Republic and those of the Government that should be jointly implemented by the President of the Republic and the Government. For instance, Article 85 of the Constitution, *inter alia*, prescribes: "To be valid, the decrees issued by the President of the Republic for the purposes specified in Items 3, 15, 17, and 21 of Article 84 of the Constitution must be signed by the Prime Minister or an appropriate Minister." According to Item 1 of Article 84 of the Constitution, the President of the Republic, *inter alia*, together with the Government, conducts foreign policy. It should also be noted that, while paying regard to the Constitution, a law may also provide for such a legal regulation that certain state institutions would be established under the President of the Republic, the Head of State.

Judicial power is executed by courts. In the Republic of Lithuania, the implementation of justice is within the competence of judicial power.

Paragraph 1 of Article 102 of the Constitution stipulates that the Constitutional Court decides whether the laws and other acts of the Seimas are in conflict with the Constitution and whether the acts of the President of the Republic and the Government are in conflict with the Constitution and laws. The Constitutional Court ensures the supremacy of the Constitution in the legal system and administers constitutional justice.

Paragraph 1 of Article 111 of the Constitution states that the courts of the Republic of Lithuania are the Supreme Court of Lithuania, the Court of Appeal of Lithuania, regional courts, and district courts. These courts constitute the system of courts of general jurisdiction.

Paragraph 2 of Article 111 of the Constitution provides that, for the consideration of administrative, labour, family, and cases of other categories, specialised courts may be established.

In its rulings, the Constitutional Court has on more than one occasion emphasised the independence of judicial power from legislative power and executive power; it has also stressed the fact that judicial power is a fully fledged branch of state power.

State institutions not categorised as belonging to legislative power, executive power, or judicial power

The Constitutional Court's ruling of 13 December 2004

Other state institutions that do not belong to the legislative, executive, or judicial branches, under Paragraph 1 of Article 5 of the Constitution, are also specified in the Constitution.

For instance, under the Constitution, such institutions and/or officials are the Seimas Ombudsmen (Paragraph 1 of Article 73), the Office of the Prosecutor General and territorial prosecutor's offices (Article 118), the National Audit Office (Chapter XII), the Bank of Lithuania (Articles 125 and 126), the Security Service (Item 14 of Article 84), the Commander of the Armed Forces (Item 14 of Article 84 and Paragraphs 1 and 3 of Article 140), and the Central Electoral Commission (Item 13 of Article 67).

Item 5 of Article 67 of the Constitution provides that the Seimas establishes state institutions provided for by law and appoints their heads; Paragraph 1 of Article 94 provides that the Government manages national affairs; Paragraph 1 of Article 123 provides that, at higher-level administrative units, governance is organised by the Government according to the procedure established by law.

Therefore, the Seimas, as well as, according to laws, the Government, has the powers to establish such state institutions that are not *expressis verbis* specified in the Constitution where the need for establishing which arises from the necessity to implement state governance, to manage national affairs, and to ensure the performance of various state functions.

The system of institutions performing state functions

The Constitutional Court's ruling of 13 December 2004

The functions of the state as the organisation of all society, where the state has to act in the interests of all society in a way that ensures social harmony, are interrelated; they comprise a single system and may not be opposed. Therefore, state institutions through which the said functions are performed may not be opposed, either.

It is also worth noting that it is not allowed to create opposition between state institutions and such other (non-state) institutions that, according to laws and paying regard to the Constitution, are assigned to perform (entrusted with performing) particular state functions or participate in the performance of state functions in certain forms and manner defined in laws, i.e. they carry out public administration and/or provide public services. Since they are institutions that carry out public administration and/or provide public services and, thus, guarantee the public interest, they comprise a single system. … both state and municipal institutions – the two systems of public power that are established in the Constitution and, as mentioned before, each of them performs characteristic functions, but still are related to each other – belong to this system. According to the Constitution, it is necessary to establish such a legal regulation that would ensure systemic correlation and interaction among institutions carrying out public administration and/or providing public services and, thus, guaranteeing the public interest, where the said interaction would include, *inter alia*, the rational proportion of their competence, efficiency, professional skills, the transfer of knowledge, skills, and experience of persons employed in the said institutions, as well as the continuity of the said activity when performing state functions and guaranteeing the public interest.

The differentiation of institutions performing state functions (civil and military institutions)

The Constitutional Court's ruling of 13 December 2004

Interconnections among state institutions, as well as interaction between state institutions and municipal institutions, do not deny their specific characteristics. The content of each state function and circumstances of performing such functions lead to the situation that state institutions performing these functions differ in terms of their status and character of their activity.

Some functions of the state are fulfilled, primarily or mainly, through civil state (and municipal) institutions, whereas others are performed through military and/or paramilitary state institutions. In its ruling

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

[…]

The constitutional requirement that state power in Lithuania must be organised in a democratic manner and that a democratic political regime must be in place in the country, the constitutional imperative of an open, just, and harmonious civil society, the constitutional principle of responsible governance, and other provisions of the Constitution mean that military and paramilitary state institutions may not have priority over civil state institutions, that decisions made by military and paramilitary institutions and their officials must be based on decisions adopted by civil state institutions, and that military state institutions must be accountable to civil state institutions and must be controlled by civil state institutions. Democratic civil control over military and paramilitary state institutions (including the armed forces) is a necessary precondition for civil democratic governance, thus, also that for a state under the rule of law.

Persons working at institutions that perform state functions (state officials who perform their functions in implementing state power and state servants)

The Constitutional Court's ruling of 13 December 2004

State and municipal institutions are in charge of public administration and/or provide public services through persons who are employed in such institutions and adopt the respective decisions. … the Constitution consolidates a different status of persons employed in the institutions through which state functions are performed.

Some persons – members of the Seimas, the President of the Republic, members of the Government, and judges – perform their functions when executing state power; they perform these functions independently; for this purpose, respective powers, which may be exercised only by the said persons and nobody else, are established for them in the Constitution and laws. Members of municipal councils perform their functions when implementing the self-government right of territorial communities – under the powers established for them by law, members of municipal councils implement the functions of self-government independently. The fact that other persons employed in the institutions through which state functions are performed render assistance to the said persons, provide them with support in another way, or provide them with services needed in their activity, does not mean that these other persons perform any functions when executing state power.

… the institutions executing state power are listed in Paragraph 1 of Article 5 of the Constitution – they are the Seimas, the President of the Republic and the Government, and the judiciary. The Constitutional Court has held in its rulings that, where state officials perform their functions while observing the Constitution and law and acting in the interests of the Nation and the State of Lithuania, they must be protected against any pressure and unjustified interference with their activities, and, where they conscientiously perform their duties, they must not be subject to any threats directed against their person, rights, or freedoms (rulings of 25 May 2004 and 1 July 2004). In order that they might be able to perform the functions prescribed for them in the Constitution in the course of implementing state power, the Constitution provides for a special legal status for the President of the Republic, the members of the Seimas, the members of the Government, and judges, which, *inter alia*, includes the limitations on work, remuneration, and political activities, as well as a special procedure for removal from office or for the revocation of a mandate and/or immunities, i.e. the inviolability of the person and the special procedure for applying criminal and/or administrative responsibility (ruling of 24 December 2002). Under the Constitution, no other persons employed in the institutions through which state functions are performed

enjoy the aforementioned immunities. On the other hand, a special – constitutional – responsibility is established in the Constitution for the majority of the said state officials. The state officials who perform their functions in executing state power also differ in this regard from all other persons employed at the institutions through which state functions are performed.

The other persons employed at the institutions through which state functions are performed constitute the body of state servants. State service is a professional activity of these persons; the said activity is related to guaranteeing the public interest.

The principle of responsible governance

The Constitutional Court's conclusion of 10 November 2012

The principle of responsible governance, as consolidated in the Constitution, implies that all state institutions and officials … are obliged to follow the Constitution and law while performing their functions and must properly implement the powers granted to them by the Constitution and laws by acting in the interests of the Nation and the State of Lithuania (conclusion of 26 October 2012).

4.3. STATE SERVICE

State servants

The Constitutional Court's ruling of 13 December 2004

State and municipal institutions are in charge of public administration and/or provide public services through persons who are employed in such institutions and adopt the respective decisions. … the Constitution consolidates a different status of persons employed in the institutions through which state functions are performed.

Some persons – members of the Seimas, the President of the Republic, members of the Government, and judges – perform their functions when executing state power … . Members of municipal councils perform their functions when implementing the self-government right of territorial communities … . …

[…]

The other persons employed at the institutions through which state functions are performed constitute the body of state servants. State service is a professional activity of these persons; the said activity is related to guaranteeing the public interest. In terms of content, the notion "state service", which is employed in the Constitution, is identical to the notion "public service". The Constitution consolidates such a concept of state service that is inseparably linked with the mission of the state as the organisation of all society to ensure human rights and freedoms and to guarantee the public interest. Professional state servants adopt decisions when carrying out public administration and/or providing public services (or participate in drafting and executing these decisions, coordinating and/or controlling the implementation thereof, etc.); however, they (unlike the members of the Seimas, the President of the Republic, the members of the Government, or judges) do not perform any functions when implementing state power and, under the Constitution, they may not have such powers. Thus, the notion "state service" employed in the Constitution does not include the office of a member of the Seimas, the President of the Republic, the Prime Minister or a minister, or that of a judge.

In this context, it should be held that the notion "state service" does not include members of municipal councils, i.e. local authority institutions, either.

The professional activity of state servants must be remunerated from the state (municipal) budget.

In this context, it is worth mentioning that the Constitution does not provide any preconditions for treating in legal acts all persons who are employed at state or municipal institutions and whose activity is remunerated from the state (municipal) budget as state servants only on the basis of the fact that they are employed at the aforementioned institutions or that their activity is remunerated from the state (municipal) budget. Only such persons may be considered state servants who are employed at state or municipal institutions and who adopt decisions when carrying out public administration and/or providing public

services (or participate in drafting and executing such decisions, coordinating and/or controlling the execution thereof, etc.).

It should also be noted that, under the Constitution, such activity where persons participate in performing state (or municipal) functions when not being employed at state or municipal institutions may not be considered state service, either.

Laws and other legal acts must establish such a legal status of state servants that would be in line with the constitutional concept of state service as a special system of professional activity (remunerated from state (municipal) budget) when adopting decisions in the area of public administration and/or providing public services (or participation in drafting and executing such decisions, coordinating and/or controlling the execution thereof, etc.). The said concept implies, *inter alia*, the internal mobility of state service as a system, the transfer of knowledge, skills, and experience of persons employed in the said institutions, as well as the continuity of the said activity when performing state functions and guaranteeing the public interest.

The constitutional concept of state service

The Constitutional Court's ruling of 13 December 2004

The legislature has broad discretion in choosing and consolidating in laws a certain model of organising state service. However, it should be stressed that, when regulating the relationships of state service, the legislature is bound by the constitutional concept of state service and must pay regard to the norms and principles of the Constitution. According to their competence, other law-making subjects must also have regard to the constitutional concept of state service when regulating the relationships of state service.

The Constitution mentions state service *expressis verbis* exclusively in Paragraph 1 of Article 33 of the Constitution, which provides that citizens have the right to participate in the governance of their state both directly and through their democratically elected representatives, as well as the right to enter on equal terms the state service of the Republic of Lithuania, and in Article 141 of the Constitution, which provides that persons performing actual military service or alternative service, as well as the officers of the national defence system, the police, and the interior, non-commissioned officers, re-enlistees, and other paid officials of paramilitary and security services who are not retired to the reserve, may not be members of the Seimas or members of municipal councils, and may not hold any elective or appointive office in civil state service, or participate in the activities of political parties or organisations.

State service is a professional activity of state servants; the said activity is related to guaranteeing the public interest. The fact that the mission of state service is to guarantee, when state and municipal institutions are in charge of public administration and provide public services, the public interest rather than private interests of the employees engaged in this activity, determines a special procedure of forming the body of state servants, the specifics of their legal status, and their special responsibility to the public for performing the functions commissioned to them.

The legal relationships of state service are legal relationships between a state servant and the state, which acts as the employer of the said person. Still, despite similarities, the legal relationships of state service are not identical to such employment relationships that arise between an employee who is not a state servant and his/her employer (irrespective of whether such relationships arise in state institutions, municipal institutions, or other enterprises, establishments, and organisations). Their legal statuses are different.

Requirements for state service

The Constitutional Court's ruling of 13 December 2004

The constitutional principle of a state under the rule of law, the constitutional imperatives of justice and social harmony, the striving for civil society, the constitutional principle of responsible governance, as well as the principles consolidated in the Constitution, such as the principles that the State of Lithuania is an independent democratic republic, that the State of Lithuania is created by the Nation, that the sovereignty belongs to the Nation, that the scope of powers is limited by the Constitution, and that state institutions serve the people, the recognition of the innate nature of human rights and freedoms, as well as other constitutional

imperatives, imply various constitutional requirements for state service as a system, which comprises the professional activity of persons employed at state or municipal institutions when adopting decisions in the course of carrying out public administration and/or providing public services (or participating in drafting and executing such decisions, coordinating and/or controlling the execution thereof, etc.) and thus guaranteeing the public interest in the entire state.

Requirements for state service: the uniformity of the system of state service

The Constitutional Court's ruling of 13 December 2004

Since the constitutional concept of state service as a system, where such a system comprises the professional activity of persons employed at state or municipal institutions when adopting decisions in carrying out public administration and/or providing public services (or participating in drafting and executing such decisions, coordinating and/or controlling the execution thereof, etc.) and, thus, ensuring the public interest in the entire state, implies the necessity to establish such a legal regulation that would ensure systemic correlations and interaction among all aforementioned institutions, where such interaction includes, *inter alia*, the transfer of knowledge, skills, and experience of persons employed in the said institutions, as well as the continuity of the said activity when performing state functions and ensuring the public interest; therefore, under the Constitution, the system of state service, which is consolidated in laws and other legal acts, must be of a uniform type. Thus, one of the elements of the constitutional concept of state service and, at the same time, one of the requirements that must be observed when organising state service and regulating the relationships of state service is the uniformity of the system of state service. Taking account of the variety of state functions, which are implemented through particular institutions, the uniformity of the system of state service does not deny the possibility of regulating certain relationships of state service in a differentiated manner.

The chosen model of the system of state service, as well as the foundations of its organisation and functioning, must be established by means of a law.

It is worth noting that "municipal service" is not separately mentioned in the Constitution. The constitutional concept of state service comprises relationships not only at state institutions, but also at municipal institutions; in this ruling of the Constitutional Court, it has been held that the notion "state service", which is employed in the Constitution, is identical to the notion "public service". The uniform system of state service is a necessary precondition for the effective interaction between state governance and local self-government, as the two systems of public power, and a necessary precondition for not leading to a clash of, but for ensuring the compatibility of, the public interest of the entire national community – the civil Nation and the public interest of territorial communities and municipalities.

It is also worth noting that only the uniform system of state service ensures its internal mobility and the possibility of the expedient arrangement of human and other resources necessary for performing certain state functions or solving other issues, which occur in the state.

The uniformity of the system of state service, comprising service at both state and municipal institutions, is an important condition of the uninterrupted and continued functioning of the system of state service. The Constitutional Court has held that, under the Constitution, there may not be any such legal situations where a certain institution exercising state power fails to function (ruling of 1 July 2004). The same can also be said about other state and municipal institutions through which state functions are performed. Thus, all state and municipal institutions must act without interruptions. This means that the functioning of state service as a system must also be continuous in order to carry out public administration constantly and effectively and to provide public services in the entire state by guaranteeing the public interest.

Requirements for state service: the possibility of a differentiated regulation

The Constitutional Court's ruling of 13 December 2004

… the uniformity of the system of state service does not deny the possibility of regulating certain relationships of state service in a differentiated manner. Such differentiation is possible in view of the fact

that, under the Constitution, it is necessary to ensure an effective performance of state functions and to guarantee the public interest. A differentiated legal regulation of the relationships of state service is based on the particularities of state (municipal) institutions and the functions performed by them, the place of the said institutions in the system of all institutions through which state functions are performed, the powers established for them, the professional skills necessary for certain state servants, as well as on other important factors.

For instance … a differentiated concept of state civil institutions, as well as of state military and paramilitary institutions, is consolidated in the Constitution, and … this fact creates the legal preconditions for establishing, by means of legal acts, a differentiated regulation of the relationships connected with the activities of civil state institutions and military and paramilitary state institutions, as well as for establishing such a legal status of persons working in civil and military and paramilitary state institutions that is distinguished by certain particularities.

State service relationships may also be regulated in a differentiated manner in view of the fact whether such service is service at state or municipal institutions, and whether particular state institutions, under the Constitution, are categorised as belonging to the legislative, executive, or judicial branches or to none of them. Various criteria may serve as the grounds for a differentiated regulation of state service relationships: state functions performed through a particular state (municipal) institution, the competence of an institution, the scope of activity, the size of an institution, the territory covered by the activity thereof, etc.

The grounds for differentiating a legal regulation of state service relationships may also be the fact that state service as a system is organised on the basis of, *inter alia*, the principles of hierarchy and accountability. The establishment of a hierarchy or other classification, grouping into categories, etc. of positions of state servants must be unified and based on the same criteria; it is not allowed that individual state institutions or individual branches of state power establish each for itself a separate system of categories (classification) of positions of state servants where such a system is not be based on criteria that are established by law and are common to entire state service. When establishing such a uniform system, it is essential to pay regard to the principle of the separation of powers, which implies, *inter alia*, that all the branches of state power – legislative, executive, and judicial – are equal in their state status. Concrete positions of state servants may be assigned to a certain category (type) only according to this uniform system; however, this must be done when paying regard to the particularities of each institution and each position, particular functions performed and responsibility taken by state servants, as well as to other factors.

Still, it should be stressed that, under the Constitution, it is not permitted to create such a legal regulation according to which state service at certain state (municipal) institutions (a certain level of the system of state service) would be eliminated from the general system of state service, or such a legal regulation that would consolidate a privileged status of state servants of certain institutions, or vice versa, their discrimination in regard to state servants of analogous institutions. For instance, in its ruling of 2 July 2002, the Constitutional Court held that "the relationships of the organisation of the national defence system and military service have their particularities" and that "taking account of these particularities, it is permitted to establish, by means of a law, various ways of resolving disputes over violations of rights and freedoms, including a prelitigation procedure for settling such disputes"; however, "the particularities of the relationships of the organisation of the national defence system and military service may not deny the constitutional right of persons to apply to a court to defend their rights and freedoms".

Requirements for state service: loyalty to the State of Lithuania and its constitutional order

The Constitutional Court's ruling of 13 December 2004

Under the Constitution, state service is service to the State of Lithuania and the civil Nation; therefore, state service should be loyal to the State of Lithuania and its constitutional order. It must be organised in such a way that only the people who are loyal to the State of Lithuania and its constitutional order adopt decisions when carrying out public administration and providing public service (or participate in drafting and executing these decisions, coordinating and/or controlling the execution thereof, etc.) at state or

municipal institutions. The Constitution does not tolerate such situations where a certain level of the system of state service, a certain state or municipal institution, or individual state servants acts contrary to the interests of the State of Lithuania or violates the constitutional order of the State of Lithuania.

It should be noted that the constitutional imperative of the loyalty of state service to the State of Lithuania also gives rise to special requirements. State servants not only must not violate the Constitution and laws themselves, but also bear the duty to take all necessary positive actions when protecting the constitutional order of the State of Lithuania. In this context, it should be noted that Paragraph 2 of Article 3 of the Constitution provides that the Nation and each citizen have the right to resist anyone who encroaches on the independence, territorial integrity, and constitutional order of the State of Lithuania by force; Article 8 of the Constitution prescribes that the seizure of state power or state institutions by force is considered anti-constitutional actions, which are unlawful and invalid; Paragraph 1 of Article 139 of the Constitution stipulates that the defence of the State of Lithuania against a foreign armed attack is the right and duty of each citizen of the Republic of Lithuania. In its ruling of 23 November 1999, the Constitutional Court held the following: "The constitutional order of the Republic of Lithuania is based on the priority of the rights and freedoms of individuals and citizens as the ultimate value, as well as on the principles establishing the sovereignty of the Nation, the independence and territorial integrity of the state, democracy, the republic as the form of government, the separation of powers, their independence and balance, local self-government, etc. The protection of the constitutional order means that it is not permitted that the social, economic, and political relationships established in the Constitution, which constitute the foundations of the life of individuals, society, and the state, be encroached upon." In the said Constitutional Court's ruling, it was also held that "the Constitution does not establish the function of protecting the constitutional order for a single institution of state power. This is a constitutional obligation of all the institutions of state power (Seimas, the President of the Republic, the Government, the judiciary) and other state establishments and organisations. This obligation derives not only from particular laws, but also from the principle of a state under the rule of law, which is established in the Constitution, and the requirement that the Constitution must be followed, enforced, not violated, and protected. Of course, every state institution protects the constitutional order only by means of the forms of the activity characteristic of it and only on the grounds of the powers granted to it by the Constitution and laws."

Requirements for state service: to obey the Constitution and law

The Constitutional Court's ruling of 13 December 2004

State service must act only by obeying the Constitution and law. Every state or municipal institution through which state functions are performed, as well as every state servant, must pay regard to the requirements of lawfulness. State servants must not abuse the powers established for them and must not violate requirements of legal acts. In its ruling of 30 June 2000, the Constitutional Court held that state institutions and officials are obligated to protect and defend human rights and freedoms; it is very important that, while fulfilling the functions entrusted to them, state institutions and officials themselves not violate human rights and freedoms. Under the Constitution, the legislature has the duty to regulate state service relations, and the system of state service should function in such a manner that not only responsibility would be established for violations committed while in state service, but also persons who committed violations while in state service would actually be held liable.

The Constitution guarantees the right for every citizen to appeal against decisions adopted by state institutions or their officials (Paragraph 2 of Article 33 of the Constitution). Complaints of citizens about the abuse of authority or bureaucratic intransigence by state and municipal officials (with the exception of judges) are examined by the Seimas Ombudsmen; they have the right to submit a proposal before a court for dismissing the guilty officials from office (Paragraph 1 of Article 73 of the Constitution). The observance of the Constitution and laws and the execution of the decisions of the Government by municipalities are supervised by the representatives appointed by the Government (Paragraph 2 of Article 123 of the Constitution). Paragraph 1 of Article 134 of the Constitution provides that the National Audit Office

supervises the lawfulness of the possession and use of state-owned property and the execution of the state budget.

It is worth mentioning in this context that Paragraph 2 of Article 30 of the Constitution provides that compensation for material and moral damage inflicted on a person is established by law. When interpreting the legal regulation laid down in Paragraph 2 of Article 30 of the Constitution, the Constitutional Court held that this paragraph "provides for the duty of the legislature to pass a law or laws providing for compensation for damage for a person who sustained material or moral damage", that "laws must provide for the actual defence of violated human rights and freedoms", that "such defence must be combined with the protection of other values enshrined in the Constitution", and that "the Constitution guarantees the right of an individual to compensation for material or moral damage, including the recovery of damage under judicial procedure" (ruling of 30 June 2000). In the Constitutional Court's ruling of 20 January 1997, it is held that "the necessity to compensate for material and moral damage inflicted on a person is a constitutional principle", which "must be considered in the law-making activity", and that Paragraph 2 of Article 30 of the Constitution "clearly indicates the form of a legal act whereby compensation for material and moral damage must be regulated" – this must be done by means of a law.

On the other hand, state servants must not experience unreasonable interference in their activity, and they must be protected from any unlawful pressure or unlawful requirements (including unlawful pressure by and unlawful requirements of state or municipal politicians). State servants may not be commissioned unlawful assignments or instructions, and state servants may not carry out such assignments or instructions and may not in any other way be forced to obey them.

Requirements for state service: to have regard to the principles of the separation of powers and the limitation on the scope of powers

The Constitutional Court's ruling of 13 December 2004

The state service system must be organised and must function strictly according to the constitutional principles of the separation of powers and the limitation on the scope of powers.

[…]

When paying regard to the constitutional principle of the separation of powers, respective powers must be assigned to every institution (as a certain level of the system of state service) of the branches (legislative, executive, judicial) of state power. Laws must consolidate such a model of organising state service where every institution has a clearly defined competence, and disputes (if any) between them (or between state servants) related to competence are settled on the basis of law and in accordance with a legal procedure.

The constitutional principle of the separation of powers is also inseparable from the provision of Paragraph 2 of Article 5 of the Constitution, whereby the scope of powers is limited by the Constitution, which is binding not only on the institutions of state power specified in Paragraph 1 of Article 5 of the Constitution, but also on other institutions that enjoy authoritative empowerments, but are not categorised as belonging to the legislative, the executive, or the judicial branch, including the state servants employed at these institutions, too. In this context, it should be noted that, as already held by the Constitutional Court, if such a legal regulation were established where not only the powers of the institution of state power that is pointed out in Paragraph 1 of Article 5 of the Constitution, but also the powers of some other state institution are expanded unreasonably from the constitutional standpoint, it would have to be held that the provision of Paragraph 2 of Article 5 of the Constitution, whereby the scope of powers is limited by the Constitution, is also violated (rulings of 24 December 2002 and 13 May 2004).

Requirements for state service: guaranteeing the public interest

The Constitutional Court's ruling of 13 December 2004

… the mission of state service is to ensure the public interest. Thus, in state service, the public interest must prevail over private interests. In state service, conflicts between public and private interests must be

avoided and no conditions for the emergence of such conflicts should be created. The possibilities provided by state service must not be used for private benefit. When ensuring the public interest, it is essential to avoid unreasonable and unlawful impact by the interest groups, and, what is even more important, pressure on state servants, who adopt decisions when carrying out public administration and providing public services (or participate in drafting and executing these decisions, coordinating and/or controlling the implementation thereof, etc.). In its ruling of 25 May 2004, the Constitutional Court held the following: "In order that the citizens – the national community – could reasonably trust state officials so that it would be possible to ascertain that all state institutions and all state officials follow the Constitution and law and obey them, and that those who do not obey the Constitution and law would not hold office for which the confidence of the citizens – the national community – is needed, it is necessary to ensure public democratic control over the activity of state officials and their accountability to society comprising, *inter alia*, the possibility of removing from office those state officials who violate the Constitution and law, who bring their personal interests or the interests of a certain group above the public interests, or who bring discredit on state authority by their actions." In its ruling of 1 July 2004, the Constitutional Court held the following: "According to the Constitution, the legislature has the duty to establish, by means of legal acts, such a legal regulation that would ensure that state officials, who perform their functions in implementing state power, and all persons who make decisions important to society and the state are able to properly exercise their powers, that clashes between public and private interests are avoided, that no legal conditions are created for state officials, who perform their functions in implementing state power, and for all persons who make decisions important to society and the state for acting in the private interests or interests of a group instead of the interests of the Nation and the State of Lithuania and for using their status for the benefit of their own, their close relatives, or other persons in order to make it possible to effectively control how state officials, who perform their functions in implementing state power, and all persons who make decisions important to society and the state follow the said requirements, and in order that the said legal regulation would make it possible to hold liable under the Constitution and law the aforementioned state officials or other persons if they do not follow these requirements."

Under the Constitution, when protecting state service from unreasonable and unlawful impact by interest groups (thus, also political forces), certain levels of the system of state service must be depoliticised. According to Article 141 of the Constitution, persons performing actual military service or alternative service, as well as the officers of the national defence system, the police, and the interior, non-commissioned officers, re-enlistees, and other paid officials of paramilitary and security services who are not retired to the reserve may not take part in the activities of political parties and organisations.

It follows from the Constitution that state service as a system of professional activity must be impartial and neutral in regard to participants of the political process, the system of state service must be organised and must function in order to ensure the continuity of guaranteeing the public interest after changes in political power take place. Under the Constitution, the possibilities provided by state service may not be used for political activity; the legislature has the duty to ensure this by means of a law. State servants must not give any priorities for any persons due to their political, moral, religious, or other attitudes, beliefs or activity, or their other status. Otherwise, the constitutional principle of the equality of the rights of all persons, which prohibits any discrimination of persons or provision of privileges to them, would be deviated from.

Requirements for state service: openness and accessibility

The Constitutional Court's ruling of 13 December 2004

The constitutional provision that state institutions serve the people, the constitutional imperative of an open society, and the constitutional concept of state service imply that state service should be open and accessible to the people whose affairs it manages. … the mission of the state as the organisation of all society, thus, also the mission of state service, is to ensure human rights and freedoms and to guarantee the public interest.

The work of both the state service system and state institutions must be organised in such a manner that the people who address state servants would not experience any arbitrariness, the abuse of authority, or bureaucratic intransigence, and that their requests would be examined and decided without delay. The requirement of the accessibility of state service to people must also be related to the harmony of state service as a system (thus, the said requirement must also be related to the necessity to ensure the unity of the state service system). It is not allowed that the work of state and municipal institutions be organised in such a manner that a person who applies to a state or municipal institution or a state servant with any issue would be forced to re-apply with the same issue due to the fact that the examination of the issue, despite the fact that this application was reasonable and was in conformity with all requirements established in legal acts (including the procedural requirements), was not initiated after the first application.

In this context, it is worth noting that Paragraph 1 of Article 73 of the Constitution provides that complaints of citizens about the abuse of authority or bureaucratic intransigence by state and municipal officials (with the exception of judges) are examined by the Seimas Ombudsmen, who have the right to submit a proposal before a court for dismissing the guilty officials from office. Paragraph 1 of Article 30 the Constitution provides that a person whose constitutional rights or freedoms are violated has the right to apply to a court.

The constitutional imperative of the openness of state service and its accessibility to people must also be linked with the provision of Article 14 of the Constitution, where the status of the Lithuanian language as the state language is consolidated. In its ruling of 21 October 1999, the Constitutional Court held that the state language, *inter alia*, integrates the civil Nation, ensures the smooth functioning of state and municipal institutions, and is an important guarantee of the equality of the rights of citizens, as it enables all citizens to associate with state and municipal institutions under the same conditions, as well as to implement their rights and legitimate interests. It was also held in the aforementioned ruling of the Constitutional Court that the constitutional establishment of the status of the state language also means that the legislature must establish by means of a law how the use of this language is ensured in public life and, in addition, it must provide for the means of the protection of the state language. According to the Constitution, the Lithuanian language must be used in all state and municipal institutions and in all establishments, enterprises, and organisations that are on the territory of Lithuania; laws and other legal acts must be published in the state language; clerical work, accounting, accountabilities, and financial papers must be in Lithuanian; state and local government institutions, establishments, enterprises, and organisations correspond with each other in the state language. The nationality of an individual (including relationships with the officials or state servants of a state or municipal institution) may not serve as the basis for him/her to demand that the rules arising from the status of the state language be not applied as far as he/she is concerned; otherwise, the constitutional principle of the equality of all persons before the law, courts, state institutions, and officials would be violated. The status of the Lithuanian language as the state language implies the necessity to organise the state service system and ensure that it functions in such a manner that only the persons who have a thorough knowledge of the state language be appointed to state service (certain position); a thorough knowledge of the state language is a necessary precondition in order to ensure that these persons, while acting as state servants, will be able to fulfil their duties, that the persons who in writing or orally address state servants will face no difficulties in communicating with them, and that normal communication between various state and municipal institutions will be ensured, that they will face no other difficulties when fulfilling their official duties or tasks related to state service.

Requirements for state service: publicity

The Constitutional Court's ruling of 13 December 2004

The constitutional provision that state institutions serve the people, the constitutional imperative of an open society, the constitutional concept of state service, and the openness of state service also imply the requirement for publicity of state service as a system. State service is service to the State of Lithuania and the Lithuanian Nation; therefore, society must receive information about the work of state institutions. The

reasoning of decisions adopted by state and municipal institutions, as well as by state servants, must be clear and transparent, and the information about the reasoning of these decisions must be available.

The requirement of the publicity of state service is also linked with the right of citizens, consolidated in the Constitution, to criticise the work of state institutions or their officials and to appeal against their decisions, as well as with the prohibition against persecution for criticism (Paragraph 2 of Article 33 of the Constitution); the said requirement is also linked with the prohibition against the censorship of mass information (Paragraph 1 of Article 44 of the Constitution) and the prohibition (imposed, *inter alia*, on the state) against monopolising mass media (Paragraph 2 of Article 44 of the Constitution). The Constitutional Court has noted that, in a democratic state under the rule of law, the public performance of duties by state officials and servants is one of the essential principles of the protection against their arbitrariness or abuse (ruling of 8 May 2000).

In this context, it is worth mentioning that, under Paragraph 2 of Article 25 of the Constitution, no one must be hindered, *inter alia*, from seeking or receiving information, and, according to Paragraph 3 of this article, the freedom to receive information may not be limited otherwise than by means of a law when this is necessary to protect human health, honour or dignity, private life, or morals, or to defend the constitutional order. Paragraph 5 of Article 25 of the Constitution prescribes that citizens have the right to receive, according to the procedure established by law, any information held about them by the state.

On the other hand, it should be noted that the requirement of the publicity of state service may not be interpreted as meaning that, at the request of various persons, information must be provided in a compulsory manner even in cases where the rights of a person or other constitutional values would be violated due to such disclosure of information. The requirement of the publicity of state service should also be linked with the requirement that state servants must be loyal to the State of Lithuania and with the requirement of the legitimacy of the activity of state service: making public, in an illegal manner, certain information that constitutes a secret protected under the Constitution and laws, or the illegal disclosure of such information in any other way, must lead to responsibility provided for by law.

Requirements for state service: qualification

The Constitutional Court's ruling of 13 December 2004

The necessity to carry out public administration and provide public services continuously and effectively by ensuring the public interest, the concept of state service as a professional activity, and the requirement of the efficiency of state service result in the requirement for qualification. State service must be qualified, it must be able to fulfil tasks commissioned to it. This fact implies quite high (higher than the requirements for other employees) requirements of qualification and professional skills for state servants, especially for officials (first of all, for those who make single-person decisions), as well as the necessity to ensure that these persons, when in service, would have the possibility of the continuing improvement of their professional competence.

The material and financial ensuring of the functioning of the state service system

The Constitutional Court's ruling of 13 December 2004

The efficiency of the functioning of the state service system also depends on material and financial stability. State service is supported from the state (municipal) budget. … the professional activity of state servants must also be remunerated from the state (municipal) budget. For this reason, the funding from the budget should be envisaged for all state tasks; otherwise, state service would become ineffective and this would reduce the trust of society and citizens in state service, would degrade or even ruin its authority and, finally, would diminish the trust of people in the state itself and its law.

The allocation of funds for state service, its material supply and the use of allocated funds should be linked with the requirements of legitimacy and publicity raised for state service, with the necessity to ensure the prevalence of the public interest over private interests and to avoid any conflict between public and private interests. The funds and other resources must be used transparently. An effective and independent

system of control is necessary for this purpose, and it must, *inter alia*, be independent from the institutions or their officials whose activity or decisions are under control. It has already been mentioned that, according to Paragraph 1 of Article 134 of the Constitution, the National Audit Office supervises the lawfulness of the possession and use of state-owned property and the execution of the state budget.

The right to enter state service (Paragraph 1 of Article 33 of the Constitution)

The Constitutional Court's ruling of 13 December 2004

These and other constitutional requirements for state service as a system imply, in turn, certain constitutionally reasonable requirements for persons who seek to implement their constitutional right to enter state service on equal terms or who have already implemented this constitutional right, i.e. for those who have already become state servants.

The aforesaid right of citizens is consolidated in Paragraph 1 of Article 33 of the Constitution, which prescribes: "Citizens shall have the right to participate in the governance of their State both directly and through their democratically elected representatives, as well as the right to enter on equal terms the State Service of the Republic of Lithuania."

The constitutional requirements for persons who seek to implement or who have already implemented their right to enter state service on equal terms are, first of all, requirements for persons who enter state service, and, secondly, requirements for state servants. The constitutionally reasonable and necessary guarantees for persons who enter state service and guarantees for state servants are correspondingly linked with the said two groups of requirements.

… the legal regulation laid down in Paragraph 1 of Article 33 of the Constitution and the constitutional concept of state service should be disclosed not only by evaluating their links with the constitutional principle of a state under the rule of law, but also with other provisions of the Constitution that must, in turn, be interpreted on the basis of the constitutional principle of a state under the rule of law.

[…]

Entering state service of the Republic of Lithuania on equal terms is a constitutional right of citizens. State service relationships comprise relationships linked with the implementation of the right of citizens to enter on equal terms the state service of the Republic of Lithuania, as well as relationships that arise when a citizen enters state service and performs his/her duties at state service; some other relationships that arise when a person leaves state service (for example, relationships linked with certain restrictions on the professional activity of former state servants, with pensions granted and paid to former state servants, etc.) are also closely linked with state service relationships. Thus, the implementation of the right of a citizen to enter on equal terms the state service of the Republic of Lithuania is linked with the implementation of other human rights … . Insofar as state service relationships are linked with human rights and freedoms, they must be regulated by means of laws. In this context, it is worth mentioning that "material legal norms take priority over procedural legal norms", because "as a rule, the latter are of an official character, i.e. they are aimed at implementing material legal norms" (ruling of 12 November 1996). The procedural relationships of state service (as well as those related to it) may be regulated by means of substatutory acts; however, this must be done in such a manner that the said substatutory acts would not compete with the legal regulation established by means of a law.

The right to enter state service does not include the right to seek to be elected as a member of the Seimas, the President of the Republic, a municipal council member, or to be appointed the Prime Minister or a minister, or to become a judge

The Constitutional Court's ruling of 13 December 2004

It was held in this ruling of the Constitutional Court that professional state servants adopt decisions when carrying out public administration and/or providing public services (or participate in drafting and

executing these decisions, in coordinating and/or controlling the implementation thereof, etc.); however, they (unlike the members of the Seimas, the President of the Republic, the members of the Government, or judges) do not perform any functions when implementing state power. The Constitutional Court has also held in this ruling that the notion "state service", which is used in the Constitution, does not include the office of a member of the Seimas, the President of the Republic, the Prime Minister or a minister, a judge, or a member of a municipal council.

It should also be noted that the fact that someone becomes a member of the Seimas, the President of the Republic, the Prime Minister, or a minister is a result of the political process – an election to the Seimas, an election to the office of the President of the Republic, or the formation of the Government respectively. The grounds and procedure for appointing the justices of the Constitutional Court are established in Article 103 of the Constitution, while those for appointing judges of other courts are laid down in Article 112 of the Constitution; in this context, it is worth noting that the appointment of the justices of the Constitutional Court and judges of other courts depends on the political will of particular officials of state power (President of the Republic or the President of the Republic together with the members of the Seimas). Therefore, although the work of a judge is a professional activity as in the case of state service, there are no grounds for stating that the same requirement of "equal terms" (consolidated in Paragraph 1 of Article 33 of the Constitution) should be applied to becoming a member of the Seimas, the President of the Republic, the Prime Minister or a minister, or a judge as it is applied to entering state service.

Under the Constitution, becoming a member of a municipal council is also a result of a political activity. Paragraph 2 of Article 119 of the Constitution provides that the members of municipal councils are elected for a four-year term, as provided for by law, from among the citizens of the Republic of Lithuania and other permanent residents of particular administrative units by the citizens of the Republic of Lithuania and other permanent residents of these administrative units on the basis of universal, equal, and direct suffrage by secret ballot.

Thus, the right of a citizen to enter on equal terms the state service of the Republic of Lithuania, as consolidated in Paragraph 1 of Article 33 of the Constitution, does not comprise his/her constitutional right to seek to become elected (if he/she meets the conditions established in the Constitution and laws) a member of the Seimas, the President of the Republic, the Prime Minister or a minister, or a member of the municipal council, nor does it comprise the right to become (if he/she meets the conditions established in the Constitution and laws) a justice of the Constitutional Court or a judge of any other court – the said rights are implied by other provisions of the Constitution. The said rights and the right of a citizen to enter on equal terms the state service of the Republic of Lithuania are different subjective rights.

The right to enter state service as a variation of the right to freely choose an occupation; the general and special conditions for entering state service (Paragraph 1 of Article 33 and Paragraph 1 of Article 48 of the Constitution)

The Constitutional Court's ruling of 13 December 2004

State service is a professional activity carried out by the employees of state or municipal institutions, i.e. it is a work activity. Thus, the right to enter on equal terms the state service of the Republic of Lithuania, as consolidated in Paragraph 1 of Article 33 of the Constitution, is related to the right of everyone to freely choose an occupation or business, which is established in Paragraph 1 of Article 48 of the Constitution. In this respect, the relations between the provision "Citizens shall have the right … to enter on equal terms the State Service of the Republic of Lithuania" of Paragraph 1 of Article 33 of the Constitution and the provision "Everyone may freely choose a job or business" of Paragraph 1 of Article 48 thereof may be regarded as relations between *lex specialis* and *lex generalis*.

It should be noted that the right of each person to freely choose an occupation in Paragraph 1 of Article 48 of the Constitution is formulated broader, i.e. as the right of each person to "freely choose a job or business". The Constitutional Court has held that the provision of Paragraph 1 of Article 48 of the

Constitution, whereby everyone may freely choose an occupation or business, is a norm of general nature based on the universally recognised concept of human freedom (ruling of 4 March 1999), which means the possibility of choosing the type of occupation at one's own discretion, i.e. by deciding freely on this subject (ruling of 10 July 1996) and that the freedom to freely choose an occupation or business, which is consolidated in Paragraph 1 of Article 48 of the Constitution, is one of the necessary conditions for satisfying human vital needs and ensuring the appropriate place of an individual in society (rulings of 4 March 1999 and 4 July 2003).

Thus, under the Constitution, a person who seeks to implement his/her constitutional right to work has the right to decide freely whether to choose an occupation in the private sector or a private business, or to seek to be employed in state service. The provision "Everyone may freely choose a job or business" of Paragraph 1 of Article 48 of the Constitution implies the duty of the state and the legislature to create the legal conditions for the implementation of this right (rulings of 4 March 1999 and 4 July 2003).

The constitutional right of a citizen to enter the state service of the Republic of Lithuania on equal terms, as a variation of the constitutional right of everyone to freely choose an occupation, especially when taking into consideration the provision "on equal terms" of Paragraph 1 of Article 33 of the Constitution, should be linked with the constitutional principle of the equality of the rights of persons (equality of persons before the law, the court, and other state institutions and officials).

[…]

In this context, it needs to be emphasised that citizens who seek to become employed in state service must not be discriminated, nor must they be granted privileges on the grounds *expressis verbis* specified in Paragraph 2 of Article 29 of the Constitution or on any other constitutionally unjustified grounds.

It is also worth noting that the constitutional imperative of equal terms when entering state service implies the competition between those who enter it, as well as an objective, impartial assessment and selection of those who enter state service. The legislature has a certain degree of discretion to establish the particularities of appointment to state service in regard to persons whose term of office at state service is linked with the term of office of the President of the Republic, members of the Seimas, members of the Government, and members of municipal councils. According to the Constitution, a person who believes that the principle of the equality of rights, thus, including his/her constitutional right to enter on equal terms the state service of the Republic of Lithuania, was violated when he/she attempted to enter state service has the right to seek to defend his/her violated right in a court.

The Constitutional Court has held that, when creating the legal preconditions for implementing the right to freely choose an occupation or business, the legislature is empowered to establish, by taking account of the nature of an occupation, the conditions of implementing the right to freely choose an occupation; in doing this, the legislature must observe the Constitution (ruling of 4 July 2003). …

The constitutional mission of state service and special tasks assigned to state service determine the fact that certain general requirements – the general terms for entering state service – may and must be set for a citizen who enters state service, and that a person who fails to meet them will not be able to become a state servant. It should be stressed that the said requirements must be clear and common to all those who seek to hold a certain position in state service, and they must be known in advance to everyone who enters state service. Such requirements must be established by means of a law.

The following general requirements – the general conditions of entering state service – should be mentioned: loyalty to the State of Lithuania and its constitutional order, knowledge of the Constitution and the foundations of the legal system (including the catalogue of human rights and freedoms), a thorough knowledge of the state language, the absence of a conflict between the position sought and private interests (or the elimination of such a conflict before a person starts holding the position), etc. Moreover, general requirements linked with the personal characteristics of a person entering state service, his/her reputation, education, etc. may be established. The constitutionally reasonable general conditions preventing a person from entering state service may also be provided for.

The requirements of professionalism and qualification, which are raised before state service as a system, also imply particular requirements for persons who enter state service. … state service relationships may and must be regulated in a differentiated manner, while taking account of the particularities of state (municipal) institutions and the functions fulfilled by them, the role of these institutions in the system of all institutions through which state functions are implemented, their competence, the professional skills necessary to particular state servants, and other important factors. Therefore, special requirements – special terms for those who seek to join state service – for persons striving for a particular position in state service or in a concrete state or municipal institution may be established in legal acts. These special terms for entering state service may be differentiated according to the content of particular positions in state service. When establishing the said terms, regard must be paid to the Constitution. These terms should also be clear and common to everyone who seeks to be appointed to a certain position in state service, and must be known in advance to those who enter state service.

Mention should be made of the following requirements – special conditions for entering state service – as professional competence, experience, the knowledge of languages, expert knowledge and skills, etc., as well as the requirements linked with the reputation of a person who enters state service, his/her personal characteristics, etc. When appointing a person to a certain position, a great variety of special conditions may be provided for; for example, ones linked with the health of a person, his/her physical abilities, ties with other persons, etc. It should be emphasised that all established special requirements for entering state service must be constitutionally justified. Otherwise, the constitutional right of a citizen to enter on equal terms the state service of the Republic of Lithuania and the constitutional right of a person to freely choose an occupation would also be violated.

The relation between the right to enter state service and citizenship

The Constitutional Court's ruling of 13 December 2004

The notion "citizen", which is used in Paragraph 1 of Article 33 of the Constitution, means that the right to enter state service is linked with the relation between a person and the State of Lithuania, i.e. citizenship. By the same, account should also be taken of the fact that foreigners and persons with no citizenship who legally stay in the Republic of Lithuania have the same rights and freedoms as citizens of the Republic of Lithuania if the Constitution, laws, and international treaties of the Republic of Lithuania do not provide otherwise (conclusion of 24 January 1995). Certain provisions of the Constitution that consolidate the rights of citizens of the Republic of Lithuania, as well as the provision "Citizens shall have … the right to enter on equal terms the State Service of the Republic of Lithuania" of Paragraph 1 of Article 33 of the Constitution, may be interpreted expansively, i.e. in a manner that the notion "citizen" would include not only citizens of the Republic of Lithuania, but also citizens of foreign states and stateless persons. Still, this does not mean that citizens of foreign states and stateless persons may, as a matter of course, in all cases, and only on the basis of the Constitution, implement these rights, including the right to enter on equal terms the state service of the Republic of Lithuania, since the legislature has the powers, while fulfilling the international obligations of the Republic of Lithuania and acting on the basis of particular international treaties, to establish the conditions and procedure for implementing such rights. In this context, it should be noted that, under Paragraph 2 of Article 48 of the Constitution, the work of foreigners in the Republic of Lithuania is regulated by law. Since the constitutional right of a citizen to enter the state service of the Republic of Lithuania on equal terms is a variation of the constitutional right of everyone to freely choose an occupation; thus, a law may provide for such conditions and procedure, arising from the international obligations of the Republic of Lithuania and international treaties, for entering the state service of the Republic of Lithuania for citizens of foreign states and stateless persons that, in turn, must not be in conflict with the Constitution.

In this context, it needs to be noted that particular international obligations of the Republic of Lithuania stem from its membership in the European Union, which is constitutionally confirmed by the Constitutional Act of the Republic of Lithuania on Membership of the Republic of Lithuania in the European Union, a constituent part of the Constitution.

The right to make a career in state service

The Constitutional Court's ruling of 13 December 2004

The constitutional right of citizens to enter on equal terms the state service of the Republic of Lithuania also implies the right of persons appointed to state service to remain state servants until the moment when the state service relationships are terminated on the grounds established in a law, as well as the right to make a career in state service when paying regard to the conditions provided for in a law, to attempts made by a state servant himself/herself to make a career, and to objective possibilities. A state servant must not face unnatural and unreasonable obstacles for making his/her career in state service.

The status of a state servant

The Constitutional Court's ruling of 13 December 2004

Having entered state service and having started holding certain office in state service (in a state or municipal institution), a citizen gains the status of a state servant. From this moment, in this state or municipal institution, he/she adopts decisions when carrying out public administration and/or providing public services (or participates in drafting and executing such decisions, in coordinating and/or controlling the implementation thereof, etc.) and, in this way, guarantees the public interest.

State servants are a special social group, the specifics of which are determined by the mission of state service and its social significance. Therefore, the legal status of state servants, as well as the implementation of the rights and freedoms enjoyed by them under the Constitution and laws, must bear important characteristics.

Requirements for state servants; limitations on activity not related to state service

The Constitutional Court's ruling of 13 December 2004

Since constitutional requirements for state service as a system imply certain constitutionally reasonable requirements for persons who seek to implement their constitutional right to enter on equal terms the state service of the Republic of Lithuania, the aforementioned requirements for state service as a system also imply requirements for state servants.

Under the Constitution, a state servant must properly fulfil his/her duties when observing the Constitution and law. He/she must be loyal to the State of Lithuania and its constitutional order, must observe the Constitution and laws, must respect, protect, and defend human rights and freedoms, must be impartial and neutral in regard to participants of the political process, must be just, must avoid a conflict between public and private interests, must not succumb to illegal pressure or illegal requirements, must not act in an arbitrary manner and must not abuse service, must improve his/her professional competence, must follow the requirements of professional ethics, must protect his/her reputation as a state servant and the authority of the institution in which he/she is employed, etc. Decisions adopted by a state servant must be transparent and their reasoning must be clear. The possibilities provided by state service must not be used for personal benefit or political activity; a state servant may not use his/her status for his/her private benefit or the private benefit of his/her close relatives or other persons. The legal regulation of state service relationships must be such that would make it possible to make sure that the aforementioned requirements are not violated. Public and democratic control over the activity of state servants and decisions adopted by them is an important condition of the trust of society in the state and its law.

The responsibility of a state servant for violations of law committed while in state service must be established by means of a law.

The legislature has the right to establish certain requirements that would limit the following activity of state servants, which is not related to state service: another occupation (business) or political and public activity that could result in a conflict between public and private interests of state servants and create the preconditions for using the possibilities provided by state service not for guaranteeing the public interest, but for private interests, where the said occupation (business) or political and public activity would hinder

state servants from performing their official duties, or would be harmful to the authority of state service or a particular state or municipal institution and would bring discredit on them.

In its rulings, the Constitutional Court has held on more than one occasion that, according to the Constitution, it is permitted to impose limitations on human rights and freedoms if the following conditions are observed: the limitations are established by means of a law; the limitations are necessary in a democratic society in order to protect the rights and freedoms of other persons and the values consolidated in the Constitution, as well as constitutionally important objectives; the limitations do not deny the nature or essence of the rights or freedoms; and the constitutional principle of proportionality is observed. In its ruling of 6 May 1997, having stated that "in state service relationships, the public interest is overriding", the Constitutional Court held that "consideration should be given to the fact that, from a social point of view, both the public interest and the rights of persons … are constitutional values".

When imposing, by means of a law, limitations on the possibility of state servants to have another occupation, consideration should be given to the fact that, under the Constitution, these limitations should be such that would help avoid any conflict between public and private interests in state service, that these limitations would ensure that state service and the possibilities offered by it are used in the public interest and are never used in pursuit of self-interest, that state servants are not obstructed in the exercise of their duties, that the authority of state service or the authority of the respective state or municipal institutions is not undermined, and that no discredit is brought upon state service or upon the said institutions.

… the constitutional concept of state service, the constitutional mission of state service, the fact that, by its very characteristics, the activity of state service is a professional activity, imply that, while paying regard, *inter alia,* to the constitutional principle of proportionality, a law should impose such limitations on another occupation of state servants where the said limitations would prevent state servants from working in such enterprises, establishments, or organisations in which they have the powers of management, or in which they control or supervise the activity of, or adopt any other decisions related to, such enterprises, establishments, or organisations (or participate in drafting and carrying out those decisions, in coordinating and/or controlling the execution thereof, etc.).

[…]

… a regulation governing the right of state servants to have another occupation and receive other remuneration would be in compliance with the Constitution where such a regulation would make it possible to decide in each particular case whether to permit a state servant to have another occupation, by assessing in a mandatory manner whether such permission would result in preconditions for creating a conflict between public and private interests in state service, for using state service in pursuit of self-interest, for engaging in an activity bringing discredit upon state service, for interfering with the proper performance of the duties of a person holding office in state service, whether a state servant would work in the enterprises, establishments, or organisations in which he/she has the powers of management, or controls and supervises their activities, or adopts any other decisions related to such enterprises, establishments, or organisations, as well as whether there are any other circumstances due to which state servants may not have another occupation and receive other remuneration. The legislature must also provide for the subjects that would decide whether to permit or not to permit a state servant to have another occupation and receive other remuneration, as well as for the responsibility of such subjects for unlawful decisions adopted by them.

[…]

Under the Constitution, the legislature, when establishing the prohibitions precluding state servants from participating in the activity incompatible with state service, also has the right to establish, by means of a law, measures to ensure that these prohibitions would be observed, as well as, *inter alia*, responsibility for participation in activities incompatible with state service. One of the sanctions established by means of a law for participation in activities incompatible with state service may be dismissal from office.

In addition, it must be stressed that a state servant has the right to choose freely whether to work in state service and follow the imposed limitations on work and other activity, or to refuse another occupation or activity.

Social rights of state servants

The Constitutional Court's ruling of 13 December 2004

The right of citizens to enter on equal terms the state service of the Republic of Lithuania, which is consolidated in Paragraph 1 of Article 33 of the Constitution, and the right of everyone to freely choose an occupation, which is stipulated in Paragraph 1 of Article 48 of the Constitution, give rise to the connection of the constitutional right of citizens to enter on equal terms the state service of the Republic of Lithuania with the other rights consolidated in Paragraph 1 of Article 48 of the Constitution, which are closely related to the constitutional right of each individual to work: the right to have proper, safe, and healthy conditions at work, as well as to receive fair pay for work and social security in the event of unemployment. These rights must be guaranteed for a state servant not to a lesser extent than for other employees; however, due to the type of state service as a specific work activity, their implementation may have certain particularities. The same could be said about other social and economic rights consolidated in the Constitution: the right of every working person to rest and leisure, as well as to annual paid leave, which is laid down in Paragraph 1 of Article 49 of the Constitution, the right to establish trade unions, which is provided for in Article 50 of the Constitution, the right to receive old-age and disability pensions, as well as social assistance in the event of unemployment, sickness, widowhood, the loss of the breadwinner, and in other cases provided for by law, which is consolidated in Article 52 of the Constitution, etc. On the other hand, certain social and economic rights of state servants at particular types of service may be restricted by means of a law due to the specificity of these types of service or the duties of state servants; for example, the right of employees to strike when defending their economic and social interests, which is consolidated in Paragraph 1 of Article 51 of the Constitution, may be restricted on the basis of Paragraph 2 of this article, which provides that limitations on this right and the conditions and procedure for its implementation must be established by law.

The Constitution guarantees that state servants, like other persons, will have the right to defend their violated rights in a court.

Requirements for former state servants

The Constitutional Court's ruling of 13 December 2004

Since … some other relationships that arise when a person leaves his/her position in state service are closely linked with state service relationships, the constitutional requirements for state service as a system may result in the fact that (for example, in order to avoid the conflicts of public and private interests, to ensure trust in state service, and to protect other constitutional values) certain requirements for former state servants will also be established. For example, certain limitations may be imposed to prevent state servants from engaging in a certain working activity etc. When imposing such limitations, it is essential in all cases to pay regard to the norms and principles of the Constitution, and such limitations must be proportionate to the sought legitimate objective, which is necessary in a democratic society and is socially important.

The transparency of state service

The Constitutional Court's ruling of 22 January 2008

It is universally recognised that transparency, as the principle of the activity of the institutions of public power and officials, implies the imparting of information, communication, openness, and publicity (inasmuch as this does not harm other values protected by law), accountability to the respective community and responsibility for decisions adopted by the officials who adopt the said decisions, as well as the fact that adopted decisions must be well-founded and clear and that, if there is a need, it would be possible to rationally reason these decisions; other persons must have the possibility of disputing these decisions in accordance with an established procedure. Transparency must be linked with participatory democracy, freedom of information, and the possibility for the citizens and other persons to criticise the activity of state institutions. The transparency of state service is a necessary precondition against the consolidation of

corruption and protectionism, against the discrimination of some persons and granting privileges to others, and against the abuse of authority; thus, the transparency of state service is also a necessary precondition for people for trusting the institutions of public power and the state in general.

… the requirement for the transparency of state service is not mentioned in the Constitution *expressis verbis*, but this certainly does not mean that the transparency of state service is not regarded as an imperative that stems from the Constitution. Quite to the contrary, the transparency of state service is a constitutional principle. The imperative of the transparency of state service stems from various provisions (norms and principles) of the Constitution, *inter alia*, from the provisions of Article 5 thereof, whereby the scope of powers is limited by the Constitution (Paragraph 2) and state institutions serve the people (Paragraph 3), from the provisions of Article 25 thereof, which enshrine freedom of expression and freedom of seeking, receiving, and imparting information and ideas, as well as the right of citizens to receive, according to the procedure established by law, any information held about them by state institutions (Paragraph 5), and from the provisions of Article 33 thereof, which state that citizens have the right to participate in the governance of their state both directly and through their democratically elected representatives, as well as the right to enter on equal terms the state service of the Republic of Lithuania (Paragraph 1), that citizens are guaranteed the right to criticise the work of state institutions or their officials and to appeal against their decisions and that persecution for criticism is prohibited (Paragraph 2), that citizens are guaranteed the right of petition, and that the procedure for the implementation of this right is established by law (Paragraph 3).

The principle of the transparency of state service … should be interpreted while taking into consideration other provisions of the Constitution, *inter alia*, the striving for civil society, which is proclaimed in the Preamble to the Constitution, the constitutional imperatives of civic consciousness, open society, and social harmony, the constitutional principles of a state under the rule of law, the equality of the rights of persons, justice, democracy, responsible governance, as well as the constitutional concept of state service, which implies, among other things, the publicity and openness of state service as a system.

The selection of applicants for state service; recording the examination of applicants for a position in state service

The Constitutional Court's ruling of 22 January 2008

Because of the fact that the right of citizens to enter state service on equal terms stems from the Constitution, a law must establish the grounds (principles) for testing the knowledge and capabilities of applicants for the position of a state servant where the said knowledge and capabilities are necessary in order to perform the duties of a state servant. … the knowledge and capabilities of a person, which are necessary in order to perform the duties of a state servant, may be tested by examining him/her.

It should be emphasised that the functioning and efficiency of all state service very much depends on the selection of persons for state service. When a person is selected for the position of a state servant by means of competition while examining him/her, such a procedure may not be regarded as a formal matter only. The examination – regardless of whether it is a written or a verbal examination or whether it is both a written and verbal examination – must have its purpose and must be oriented to the testing and assessment of the knowledge and capabilities that are necessary for every state servant, as well as of the specific knowledge and capabilities that are necessary in order to implement the functions that are established in the position description of a state servant for which a person is aspiring. The winner of the competition to a certain position of a state servant – the person who will perform specific functions defined in the position description of a state servant – is established according to the examination results of the applicants who participated; therefore, the questions (tasks) of the examination – regardless of whether it is a written or a verbal examination or whether it is both a written and verbal examination – must first of all be related to those positions in state service for which applications have been filed (for which the competition is held).

… the Constitutional Court has held in its acts more than once that a person who thinks that his/her rights or freedoms are violated has an absolute right to an independent and impartial court – an arbiter that would settle a dispute; under the Constitution, the legislature has the duty to establish such a legal regulation

whereby all disputes regarding any violation of the rights or freedoms of persons could be settled in a court; the rights of a person must be defended not formally, but in reality and effectively against unlawful actions of private persons, as well as against those of state institutions or its officials. …

Thus, in order that persons could implement, not formally, but in reality and in an effective manner, their right to defend in a court their violated constitutional right to enter on equal terms the state service of the Republic of Lithuania, the reasoning of decisions by which they are not appointed to the position of a state servant must be clear and the information regarding the reasoning of these decisions must be accessible to a court. Otherwise, a court would not be able to decide the respective case.

The Constitutional Court has held that a prelitigation procedure for settling disputes may also be established (rulings of 2 July 2002, 4 March 2003, 17 August 2004, 29 December 2004, 7 February 2005, and 16 January 2006 and the decision of 8 August 2006).

Thus, the information about the decisions regarding the non-appointment of a person to a position in state service must also be accessible to institutions that decide disputes in accordance with a prelitigation procedure.

Consequently, if a law prescribes that the knowledge and capabilities of a person that are necessary for carrying out the duties of a state servant are tested by examining him/her, the course of the examination (*inter alia*, the questions of the members of the examination commission and the answers of the applicants) must be recorded and must be accessible both to institutions that decide the respective disputes and to courts.

It also needs to be emphasised that various ways of recording the course of such an examination may be chosen. … it needs to be noted that, in protecting the data regarding the course of examinations and in disclosing them according to the procedure established by law, regard must be paid to the right of a person to privacy, which is enshrined in Article 22 of the Constitution.

It also needs to be emphasised that a court that decides a case regarding the non-appointment of a person to a position in state service acts not as a certain "commission for the consideration of examination complaints", but as a jurisdictional institution, which decides whether the procedure of examination (competition) and the constitutional right of a person to enter the state service of the Republic of Lithuania on equal terms were violated.

The right to enter state service (Paragraph 1 of Article 33 of the Constitution)

The Constitutional Court's ruling of 7 July 2011

Under Paragraph 1 of Article 33 of the Constitution, citizens, *inter alia*, have the right to enter on equal terms the state service of the Republic of Lithuania.

The constitutional right to enter on equal terms state service should be linked, *inter alia*, to the right of each individual to freely choose an occupation, which is consolidated in Article 48 of the Constitution. In its rulings of 13 December 2004 and 13 August 2007, the Constitutional Court noted, *inter alia*, that the constitutional right of citizens to enter the state service of the Republic of Lithuania on equal terms is a variation of the constitutional right of every person to choose an occupation.

It needs to be noted that the provision of Paragraph 1 of Article 33 of the Constitution, which consolidates the right of citizens to enter on equal terms the state service of the Republic of Lithuania, should not be interpreted only linguistically and should not be understood only as the right to enter state service, i.e. only as one related to the appointment of a person to state service. As the Constitutional Court has noted more than once, state service relationships comprise not only the relationships linked to the implementation of the right of citizens to enter on equal terms the state service of the Republic of Lithuania, but also the relationships that arise after they enter state service and when they perform their duties in state service (rulings of 13 December 2004 and 13 August 2007).

In its ruling of, *inter alia*, 13 August 2007, the Constitutional Court held that, when creating the legal preconditions for implementing the right to freely choose an occupation or business (thus, also to enter state service), the legislature is empowered to establish, by taking account of the nature of an occupation, the conditions of implementing the right to freely choose an occupation.

The Constitutional Court has also held that the right of citizens to enter on equal terms the state service of the Republic of Lithuania is not absolute: the state cannot and does not assume the obligation to employ every person in state service. State service must be qualified, and persons employed in state service must be able to fulfil tasks commissioned to this service. Those who wish to become state servants or officials must also have required education, professional experience, and certain personal characteristics; in addition, the higher the position or the more important the area of activities, the higher the requirements that are raised before persons holding such positions (rulings of 4 March 1999, 13 August 2007, and 22 January 2008).

Requirements for state service: loyalty to the State of Lithuania and its constitutional order

The Constitutional Court's ruling of 7 July 2011

Under the Constitution, state service is service to the State of Lithuania and the civil Nation; therefore, state service should be loyal to the State of Lithuania and its constitutional order; one of the general conditions of entering state service is loyalty to the State of Lithuania and its constitutional order (rulings of 13 December 2004 and 13 August 2007). Only such persons who are loyal to the state and whose loyalty to the state and reliability do not raise any doubts may work in state institutions (rulings of 11 November 1998, 4 March 1999, and 13 August 2007).

Vetting the reliability of both applicants for positions in state service and state servants; assessing the reliability and loyalty to the State of Lithuania of persons who are seeking to hold or are holding a position in state service where such a position is connected with the use or protection of classified information (on the protection of classified information, also see 2. The constitutional status of persons, 2.2. Civil (individual) rights and freedoms, 2.2.7. The freedom to express convictions and freedom of information, 2.2.7.1. The protection of the freedom to express convictions and freedom of information, the ruling of 7 July 2011)

The Constitutional Court's ruling of 7 July 2011

The legislature not only may, but also must establish such a legal regulation that would permit vetting the reliability – loyalty to the State of Lithuania, reputation, etc. – of those persons who seek to hold a position in state service. The reliability of applicants for the positions in state service must be vetted yet before they start holding office. When state servants are in office, their reliability may be also verified if reasonable doubts arise. If there is the reasonably stated non-reliability of a person who seeks a certain position in state service, such a person may not be accepted to the position (ruling of 13 August 2007).

In its ruling of 13 December 2004, the Constitutional Court held that … one of the special conditions for entering state service [may be] the requirements related to the reputation of a person who enters state service, his/her personal characteristics, etc. When appointing a person to a certain position, a great variety of special conditions may be provided for; for example, ones linked with the health of a person, his/her physical abilities, ties with other persons, etc. The special conditions for entering state service may be differentiated according to the content of certain positions in state service. All established special requirements for entering state service must be constitutionally justified.

… under the Constitution, a special condition established for persons seeking to hold or holding a position in state service where such a position is connected with the use or protection of classified information is an especial and not in the least questionable reliability of these persons and their loyalty to the State of Lithuania. The reliability of a person who seeks to hold or holds a position in state service that is connected with the use or protection of classified information, as well as the loyalty of that person to the State of Lithuania, must be assessed by taking account of all significant circumstances characterising that person, *inter alia*, his/her activity, committed violations of law, his/her professional and personal qualities, reputation, and ties with other persons. Therefore, the legislature has broad discretion while regulating the relationships connected with the protection of state secrets and official secrets, *inter alia*, when establishing the criteria for the reliability of persons who seek to hold or hold a position in state service where such a position is connected with the use or protection of classified information and for the loyalty of these persons

to the State of Lithuania, as well as the procedures for screening such persons. In the course of implementing the said discretion, 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.

In this context, it also needs to be mentioned that, in its ruling of 13 August 2007, the Constitutional Court noted, *inter alia*, that the legal regulation of the relationships related to the verification of the reliability of a person (both the reliability of a person who seeks to hold a position in state service and the reliability of a person who already holds such a position) must be such that minor, coincidental, or similar facts and circumstances would not become the basis for the non-reliability of a person seeking to hold or holding a position in a state or municipal institution, and that the non-reliability of such a person would not be stated by referring to presumptions alone.

… it is not permitted to establish any such a legal regulation that would allow a state institution authorised by law to state, on the basis of minor circumstances alone, the unreliability (or the disloyalty to the State of Lithuania) of a person seeking to hold or holding a position in state service where such a position is connected with the use or protection of classified information. However, this does not mean that the legislature may not provide for such measures of the protection of classified information that would enable to prevent, in advance, threats to the security of classified information, and, at the same time, threats to state interests.

[…]

… the fact that a person is not held guilty of committing a criminal act until the guilt of the person in committing the said act is proven in accordance with the procedure established by law and recognised by an effective court judgment does not yet mean that a person seeking to hold or holding a position in state service where such a position is connected with the use of classified information and protection thereof necessarily deserves the trust of the state and that a state institution authorised by law may not have certain doubts as to the reliability of that person or his/her loyalty to the State of Lithuania, which would be raised not as a result of the established guilt of the person in committing a criminal act, but by certain factual circumstances, the activity of the person, his/her personal characteristics, reputation, ties, or other significant circumstances, *inter alia*, ones relating to a possibly committed criminal act.

Thus, the circumstances that raise doubts as to the reliability of a person seeking to hold or holding a position in state service where such a position is related to the use of classified information or protection thereof, or regarding the loyalty of such a person to the State of Lithuania, can be also connected with a criminal act possibly committed by that person. In assessing the said circumstances, a state institution authorised by law does not administer justice, nor does it judge concerning the guilt of the person in committing a criminal act.

[…]

… the circumstances that a person is held criminally liable for an intentional criminal act or is subject to a pretrial or operational investigation in relation to the said act may imply the vulnerability of the person and, at the same time, raise doubts as to his/her reliability and loyalty to the State of Lithuania.

[…]

Although the legislature has broad discretion in regulating the relationships connected with the protection of state secrets and official secrets, it may not establish any such a legal regulation that would create the preconditions for a state institution authorised by law to state, on the basis of minor circumstances, the existence of the grounds for the unreliability of a person holding a position in state service where such a position is connected with the use of classified information and protection thereof, as well as the existence of the grounds for the disloyalty of such a person to the State of Lithuania, as a result of which the person would lose his/her position in state service.

[…]

… the provision "Citizens shall have … the right to enter on equal terms the state service of the Republic of Lithuania" of Paragraph 1 of Article 33 of the Constitution and the aforementioned constitutional imperatives stemming from the principle of a state under the rule of law give rise to the duty of the legislature

to establish such a legal regulation that would lay down an alternative measure for revoking the authorisation to handle or familiarise oneself with classified information or a security clearance and for the subsequent dismissal of a person from a certain position in state service, where the said measure would create the preconditions for a sufficient individualisation of the limitations on the rights and freedoms of a person and for assessing as much as possible the individual situation of each person. Such a measure, *inter alia*, is suspension from office applied in cases where a person is held criminally liable for an intentional criminal act or is subject to a pretrial or operational investigation in relation to the said act; the said suspension creates the preconditions for the additional verification of the reliability of a person and his/her loyalty to the State of Lithuania in order to determine whether his/her continued employment would pose a threat to the security of classified information.

The work pay of state servants

See 2. The constitutional status of persons, 2.4. Economic, social, and cultural rights, 2.4.1. Economic rights, 2.4.1.2. The right to work, 2.4.1.2.4. The right to receive fair pay for work, the ruling (no KT29-N15/2016) of 27 October 2016.

Equal competition between persons entering state service (Paragraph 1 of Article 33 of the Constitution)

The Constitutional Court's ruling of 6 June 2018

… Paragraph 1 of Article 33 of the Constitution, which guarantees citizens the right to enter on equal terms the state service of the Republic of Lithuania, gives rise to one of the requirements for the legal regulation of state service, i.e. there must be equal competition between persons entering state service, which implies that persons entering state service must be assessed on the basis of their knowledge and skills necessary to perform the respective functions of a state servant and that regard must be paid to the imperatives, which stem from Article 29 of the Constitution, in relation to the equality of the rights of persons and non-discrimination and non-granting of privileges on the grounds *expressis verbis* specified in the Constitution or any other constitutionally unjustifiable grounds.

The duty of the state to prevent the abuse of power and corruption in state service

The Constitutional Court's ruling of 18 April 2019

… the Constitution, *inter alia*, the provision of Paragraph 3 of Article 5 thereof that state institutions serve the people, Paragraph 1 of Article 33 thereof, the constitutional concept of state service, and the constitutional principles of transparency and publicity of state service give rise to the duty of the state to take all possible measures, *inter alia*, in order that corruption and the abuse of power in state service be prevented.

In this context, it should be noted that corruption as a social phenomenon has negative material and moral effect on the political and economic system of the state; it damages, *inter alia*, the reputation of state servants and officials, undermines the authority of institutions in which they work and the authority of all of state service, encourages disrespect for laws, creates the preconditions for violating human rights, and undermines the trust of the public in the state, its institutions, democratic government of the state, and law; thus, corruption destroys the constitutional foundations of a democratic state under the rule of law. In addition, the entrenched existence of corruption encourages such conduct of persons working in state and municipal institutions that does not comply with the powers conferred on them or the standards of conduct that are laid down in legal acts and encourages such conduct that is intended to benefit these persons themselves or others to the detriment of the interests of the state as a whole or the interests of separate persons.

The application of legal responsibility to state servants (officials) for the committed violations of law, *inter alia*, misconduct in office, in order to prevent the abuse of power and corruption in state service

The Constitutional Court's ruling of 18 April 2019

… public and democratic control over the activity of state servants and decisions adopted by them is an important condition for the trust of society in the state and its law; the responsibility of a state servant for the violations of law committed while in state service must be established by law (ruling of 13 December 2004). Under the Constitution, the legislature has the duty to regulate state service relationships, and the system of state service should function in such a manner that not only responsibility would be established for violations committed while in state service, but also persons who have committed violations while in state service would actually be held liable (ruling of 13 August 2007).

The Constitutional Court held in its rulings of 25 May 2004 and 13 December 2004 that, in order that citizens could reasonably trust state officials and that it would be possible to ascertain that all state institutions and all state officials follow the Constitution and law and obey them, and that those who do not obey the Constitution and law would not hold the office for which the trust of citizens is needed, it is necessary to ensure public democratic control over the activity of state officials and their accountability to society, including, *inter alia*, the possibility of removing from office those state officials who violate the Constitution and law, who bring their personal interests or the interests of a certain group above the public interests, or who bring discredit on state authority by their actions.

… a person who has exercised his/her right, established in Paragraph 1 of Article 33 of the Constitution, to enter state service must be loyal to the state and work in such a way that his/her loyalty to the state and his/her reliability would not give rise to any doubts, that citizens could reasonably trust in state servants (officials), that state service would be qualified and capable of performing the tasks assigned to it, *inter alia*, in preventing the abuse of power and corruption in state service.

At the same time, it needs to be noted that, in order to ensure the proper functioning of state service, its transparency and publicity, under the Constitution, *inter alia*, Paragraph 1 of Article 33 thereof, and the constitutional principle of a state under the rule of law, the prevention of the manifestations of corruption or acts of a corrupt nature in state service is one of the constitutionally important objectives of the state.

Thus, if a state servant (official) possibly commits criminal acts or other acts that are contrary to law, *inter alia*, misconduct in office, he/she, under the Constitution, *inter alia*, Article 22 and Paragraph 1 of Article 33 thereof, and the constitutional principle of a state under the rule of law, may be subject to state coercive measures, which have a certain effect on his/her conduct while simultaneously limiting the exercise, *inter alia*, of his/her right to the protection of private life or the right to enter state service, in order to reach the constitutionally important objectives, *inter alia*, to ensure the transparency and publicity of state service.

Thus, under the Constitution, *inter alia*, Paragraph 1 of Article 33 thereof, and the constitutional principle of a state under the rule of law, it is not allowed to establish such a legal regulation under which a state servant (official) who fails to comply with the constitutionally justifiable requirements laid down in the Constitution and other legal acts with respect to state service as a system and persons working in it could escape legal responsibility; the law must lay down the respective legal measures, i.e. the responsibility of the state servant (official) for the violations committed by him/her, including misconduct in office; one of the sanctions established by law for misconduct in office may be the dismissal of the state servant (official) from office. Otherwise, without the establishment of the possibility of applying the respective legal responsibility to such a state servant (official), a situation that would not be tolerated under the Constitution would be created, i.e. the preconditions would be created for working in state service for such persons who do not comply with the requirements arising from the Constitution, i.e. such requirements as the proper performance of their duties in compliance with the Constitution and law, loyalty to the State of Lithuania and its constitutional order, the adoption of transparent and reasoned decisions, the avoidance of conflicts between public and private interests, and the non-abuse of office.

… under the Constitution, *inter alia*, Paragraph 1 of Article 33 thereof, as well as the constitutional concept of state service and the constitutional principle of a state under the rule of law, in order to achieve the constitutionally important objectives – ensuring the proper functioning of state service as well as its transparency and publicity, preventing, *inter alia*, the abuse of power and corruption in state service, detecting criminal and other unlawful acts, *inter alia*, misconduct in office, including that of a corrupt nature, that are possibly being committed or have been committed by a state servant (official) and are incompatible with the said requirements, arising from the Constitution, for state service as a system and for state servants (officials), and creating the preconditions for properly applying, to the persons who commit violations in state service, legal responsibility as a public form of control over servants (officials) of a democratic state and their accountability to society – information secretly collected by other authorised state institutions for criminal justice or other lawful purposes about persons may also be used in the cases and according to the procedure established by law; the use of such information can not only have a certain effect on the conduct of the state servant (official), but it can also interfere, *inter alia*, with his/her private life.

The right of state servants (officials) to apply to a court for the defence of their rights violated as a result of the application of official liability

The Constitutional Court's ruling of 18 April 2019

… the right of a state servant (official), which arises from the Constitution, *inter alia*, Paragraph 1 of Article 30 thereof, and the constitutional principle of a state under the rule of law, to apply to a court regarding the defence of his/her rights violated as a result of the application of official liability must be real, i.e. the person in question must have the real possibilities of effectively defending, under judicial procedure, his/her violated rights against, in his/her opinion, the unlawful actions of state (municipal) institutions and/or against the abuse of the powers granted to them in the course of the application of state coercive measures, *inter alia*, in secretly collecting information (data) about the person and in using this information for the purposes of the investigation of misconduct in office; such a person has the right to defend his/her violated rights and legitimate interests effectively, irrespective of whether or not they are directly enshrined in the Constitution.

It should also be noted that the right of a state servant (official), which arises from the Constitution, *inter alia*, Paragraph 1 of Article 30 thereof, and the constitutional principle of a state under the rule of law, to apply to a court regarding the defence of his/her rights violated as a result of the application of official liability also implies his/her right to the due court process and a fair court decision. During the consideration of a dispute before a court, it is necessary to ensure the right of the state servant (official) to have full access to all the material, data, or information used in the investigation of the misconduct in office, *inter alia*, the information that has been secretly collected about him/her in the course of applying state coercive measures and, in accordance with the procedure and under the conditions established by law, has been declassified and transferred for use for the purposes of the investigation of misconduct in office; in addition, it is necessary to ensure the right of the state servant (official) to have access to the evidence used in the case; moreover, the state servant (official) has the right to provide explanations, to challenge the lawfulness or authenticity of the evidence or other material used in the investigation of the misconduct in office, to challenge the necessity and proportionality of such use, as well as to challenge all the factual and legal circumstances relating to the imposition of an official penalty. In the court proceedings, the state servant (official) must have the right to defend himself/herself effectively, *inter alia*, to have his/her representative, and the state servant (official) must be given sufficient time and possibilities for properly preparing for defence.

A court (judge), while performing the duty to administer justice, arising from Paragraph 1 of Article 109 of the Constitution, must also assess whether the use of the above-mentioned declassified information in investigating misconduct in office, for which the person may be dismissed, *inter alia*, from the position in state service, has violated the constitutional rights of the state servant (official), *inter alia*, the right to the protection of the inviolability of private life and correspondence, which is ensured by Article 22 of the

Constitution, and the right to enter state service on equal terms, which is consolidated in Paragraph 1 of Article 33 thereof.

At the same time, it needs to be mentioned that, under the Constitution, *inter alia*, Paragraph 1 of Article 30 and Article 109 thereof, and the constitutional principle of a state under the rule of law, a court must, in each concrete case, provide clear and sufficient legal arguments and reasons for its decision.

[…]

… under Article 109 of the Constitution, it is not allowed to establish any such limitations that would deny the powers of a judge and a court to administer justice properly, *inter alia*, would hinder the adoption of a fair and reasoned decision in a case. Thus, when settling a dispute regarding the imposition of an official penalty, a court (judge) must, in each case, fully assess all the material, data, or information used in investigating misconduct in office. The court (judge) must, in each case, decide whether information that has been collected about a person secretly in the manner established in laws and has been declassified in accordance with the procedure laid down in legal acts and transferred, *inter alia*, for use for the purposes of investigating the misconduct in office committed by the said person can be considered evidence in the concrete case, whether such information complies with the requirements for the lawfulness and credibility of evidence, and whether such use is necessary in a democratic society and is in line with the principle of proportionality; at the same time, the state servant (official) must be afforded effective protection against the possible arbitrariness of the authorities and the real possibility of defending himself/herself regarding his/her possibly violated rights and freedoms, *inter alia*, his/her right to the inviolability of private life and correspondence, which is protected by Article 22 of the Constitution, and his/her right to enter state service on equal terms, which is consolidated in Paragraph 1 of Article 33 thereof, when challenging, *inter alia*, the lawfulness, necessity, and proportionality of the use of declassified information as evidence in the investigation of his/her misconduct in office, which includes the duty of the court (judge) to assess whether, in this concrete case, the pursued legitimate objectives could be achieved by other less restrictive measures.

[…]

… under the Constitution, *inter alia*, the constitutional principle of a state under the rule of law, among others, the imperatives of justice and proportionality, which arise from this principle, the constitutional right of a state servant (official) to apply to a court does not deny the duty of the state, arising from the Constitution, to properly investigate instances of misconduct in office and to apply official liability to those state servants (officials) who perform the actions, *inter alia*, commit misconduct in office, including of a corrupt nature, that are incompatible with the requirements stemming from the Constitution for state service as a system and for persons working in state service.

[…]

Thus, under the Constitution, *inter alia*, Paragraph 1 of Article 30 and Article 109 thereof, and the constitutional principle of a state under the rule of law, in administering justice and adjudicating on a dispute regarding an imposed official penalty, *inter alia*, dismissal from state service, a court (judge) must, in each situation, consider cases in a fair and objective manner and adopt reasoned and well-founded decisions, i.e. fully assess the balance of interests involved in the proceedings: on the one hand, the court (judge) must assess the legitimate aim of the state to properly apply official liability to state servants (officials) who have violated the constitutional requirements raised for state service and state servants and, on the other hand, assess the lawfulness of the investigation into misconduct in office, *inter alia*, whether the pursued legitimate objectives could be reached in the particular case by other less restrictive measures and whether the constitutional rights or freedoms of the person were violated during such a procedure, *inter alia*, his/her right to the protection of private life or his/her right to enter state service, among others, by using, in the manner prescribed by law and for the purposes of investigating the misconduct in office committed by him/her, information secretly collected about the person by other authorised state authorities and declassified in the manner established in legal acts where the said information concerns an act with the characteristics of a corruption criminal act. In this context, it needs to be noted that … under the Constitution, the court (judge) is not and cannot be merely a passive observer of the proceedings; the court (judge) must, in each case, take

all possible measures to establish the truth in the case and reach a fair and objective decision, while ensuring the implementation of the law expressed in the Constitution, laws, and other legal acts and guaranteeing the supremacy of law and the protection of human rights and freedoms.

At the same time, it also needs to be noted that, under the Constitution, a state servant (official) must be afforded effective protection against the possible arbitrariness of the authorities in investigating his/her misconduct in office and the real possibility of making use of the judicial protection of his/her constitutional rights and freedoms possibly violated during such an investigation, *inter alia*, his/her right to the protection of private life and correspondence, which is guaranteed by Article 22 of the Constitution, and the right to enter state service on equal terms, which is enshrined in Paragraph 1 of Article 33 of the Constitution, when challenging, *inter alia*, the lawfulness, necessity, and proportionality of the use of declassified criminal intelligence information … as evidence in the course of investigating the misconduct in office of a corrupt nature committed by him/her.

The requirement to ensure the due process of law in the course of the procedure for investigating misconduct in office committed by state servants (officials)

The Constitutional Court's ruling of 18 April 2019

… the Constitution, *inter alia*, Paragraph 1 of Article 33 thereof, the constitutional concept of state service, the constitutional principle of a state under the rule of law, and the constitutional imperatives of justice and reasonableness give rise to the requirement for the legislature that the procedure for imposing official penalties, *inter alia*, the procedure for investigating the misconduct in office committed by a state servant (official), be also regulated in a manner that ensures the due process. The guarantees of the due process of law during the procedure for investigating misconduct in office also include the ensuring of the constitutional rights of a public servant (official), *inter alia*, the right to the protection of the inviolability of private life and correspondence, which is guaranteed by Article 22 of the Constitution, and the right to enter state service on equal terms, which is consolidated in Paragraph 1 of Article 33 thereof; the said guarantees also create the preconditions for preventing the unlawful actions of state (municipal) institutions and/or the abuse of the powers granted to them when they apply state coercive measures, *inter alia*, official liability, including in cases where information secretly collected, in the cases and in accordance with the procedure established in laws, by other authorised state institutions is used in investigating misconduct in office of a corrupt nature, for which the most severe official penalty – the dismissal of the state servant (official) from office – may be applied.

A state servant (official) has the right to be informed of the beginning of an investigation into misconduct in office; he/she has the right, at the beginning of an investigation into misconduct in office and during all this procedure, to have full access to any material, data, or information used in the investigation, *inter alia*, the information that has been secretly collected about him/her in the course of applying state coercive measures and, in accordance with the procedure established in laws, has been declassified and transferred for use for the purposes of the investigation of misconduct in office; he/she also has the right to have full access to evidence used in this investigation; in addition, he/she has the right to be heard and to present his/her explanations during this procedure when the respective decisions are taken regarding him/her; the state servant (official) has the right to challenge the material or evidence used in the case concerning his/her misconduct in office, to question the lawfulness of such use, to demand that the evidence that he/she considers inadmissible be not used, and to challenge all the factual and legal circumstances relating to the imposition of an official penalty. During the procedure for investigating misconduct in office, it is necessary to ensure the right of the state servant (official) to effective defence, *inter alia*, the right to have his/her representative.

[…]

… as mentioned before, under the Constitution, the due process of the investigation of misconduct in office is when, already during this process, a state servant (official) has the real possibilities of defending himself/herself against the raised suspicions that he/she has committed misconduct in office; he/she has the

right, *inter alia*, to have his/her representative, to be informed of the opening of the investigation of misconduct in office, including the right to have access to the available information on the allegedly committed misconduct in office, as well as the right to submit his/her written explanation regarding the said misconduct in office, to participate in the on-the-spot verification of the factual data relating to the misconduct in office, and, upon the completion of the investigation of the misconduct in office, to have access to the reasoned conclusion on the investigation results and any other material used in the course of the investigation of the misconduct, including the right to have access to all declassified criminal intelligence information, used in the investigation, about an act with the characteristics of a corruption criminal act …

[…]

… under the Constitution, *inter alia*, Paragraph 1 of Article 33 thereof, and the constitutional principle of a state under the rule of law, the legislature should take appropriate measures to consolidate in a law the essential guarantees of the protection of human rights and freedoms in the process of investigating misconduct in office.

The powers of state institutions in investigating the violations of law possibly committed by state servants (officials) to use declassified information collected secretly by other state institutions about the said state servants (officials)

The Constitutional Court's ruling of 18 April 2019

In its ruling of 15 March 2017, interpreting the requirements arising, *inter alia*, from Article 31 of the Constitution and from the constitutional principle of a state under the rule of law, and interpreting the right of a person to defence and to the due process of law, the Constitutional Court also noted that, if investigations and hearings of criminal cases in which persons are suspected and accused of having committed a certain crime do not establish (prove) any characteristics of the body of this crime, but detect the characteristics of other criminal acts or of other violations of law, the state institutions and officials are not released from the duty to investigate them and, if there are grounds, to bring the persons to the respective legal responsibility.

Thus … under the Constitution, *inter alia*, Paragraph 1 of Article 33 thereof, the constitutional concept of state service, and the constitutional principle of a state under the rule of law, among other things, the imperatives of lawfulness, necessity in a democratic society, and proportionality, which arise from the said principle, if the application by the state of the respective coercive measures, established by law, to a state servant (official) or another person, in particular measures designated for the investigation of criminal acts, does not establish the characteristics (as they have not been proved) of the body of a crime, but detects the characteristics of other possibly committed acts that are contrary to law, *inter alia*, misconduct in office, including that of a corrupt nature, which are incompatible with the requirements stemming from the Constitution for state servants (officials) (as, for instance, the proper performance of their duties in compliance with the Constitution and law, the avoidance of conflicts between public and private interests, the non-abuse of office, and the adoption of transparent and reasoned decisions), or identifies state servants (officials) who have possibly committed them, state institutions and officials have the duty to properly investigate such violations of law and, if there are grounds, to bring the said state servants (officials) to respective legal responsibility, *inter alia*, by using, in the cases and according to the procedure established by law, information collected secretly about them by other authorised state institutions, which discloses the above-mentioned violations of law, *inter alia*, misconduct in office, possibly committed by them.

Such use of this information for investigating misconduct in office is based on the constitutionally important objectives of the protection of the public interest; it aims to protect the interests of the state, state service, and of all society, to prevent, *inter alia*, corruption in state service, to strengthen the credibility and responsibility of state service and every state servant (official), and to guarantee that only such persons hold the positions of state servants (*inter alia*, statutory positions) who meet the high requirements established by law, are loyal to the State of Lithuania, and are of good repute.

[…]

Otherwise, without the establishment of the possibility of applying official liability to a state servant (official), *inter alia*, by using information collected about him/her by other authorised state institutions in the cases and according to the procedure established by law, a situation that would not be tolerated under the Constitution would be created – it would not be ensured that persons who have committed misconduct in office would actually be brought to official liability, i.e. the preconditions would be created for working in state service for such persons who do not comply with the requirements arising from the Constitution, such as the proper performance of their duties in compliance with the Constitution and law, loyalty to the State of Lithuania and its constitutional order, the adoption of transparent and reasoned decisions, the avoidance of conflicts between public and private interests, and the non-abuse of office.

The presumption of innocence in investigating misconduct in office possibly committed by state servants (officials)

The Constitutional Court's ruling of 18 April 2019

The presumption of innocence is ensured in Paragraph 1 of Article 31 of the Constitution. The Constitutional Court, when interpreting the presumption of innocence, has held that it is a fundamental principle of the administration of justice in criminal proceedings and one of the most important guarantees of human rights and freedoms (*inter alia*, the rulings of 12 April 2001 and 24 February 2017). However, the provision of Paragraph 1 of Article 31 of the Constitution … must be assessed in the context of other provisions of the Constitution; therefore, it has a broader content and must not be linked only to criminal legal relationships (rulings of 29 December 2004 and 24 February 2017). The presumption of innocence is inseparably linked to respect for and the protection of other constitutional human rights and freedoms, as well as acquired rights (ruling of 7 July 2011).

… the presumption of innocence must also be ensured when information collected secretly, in accordance with the procedure established in laws, by other authorised state institutions is transferred for use and/or is used for the purposes of investigating misconduct in office; in this context, it should be mentioned that, in itself, the fact of transferring the said information cannot serve as a basis, in the absence of a proper and thorough investigation of the possibly committed misconduct in office, for considering that the state servant (official) has committed misconduct in office. Such transferred information either may serve as a basis for launching an investigation into a particular instance of misconduct in office or may be used for investigating such misconduct, i.e. in order to establish (prove) the fact of misconduct in office and the circumstances in which it was committed.

… under the Constitution, in cases and under the conditions established by law, the possibility of using, for the purposes of the investigation of misconduct in office, the said declassified information collected by other authorised state institutions may not in itself be assessed as a violation of the principle of the presumption of innocence.

4.4. THE RESPONSIBILITY OF THE AUTHORITIES TO SOCIETY. THE CONSTITUTIONAL RESPONSIBILITY OF THE HIGHEST-RANKING STATE OFFICIALS

Impeachment (Article 74 of the Constitution)

The Constitutional Court's ruling of 11 May 1999

In the Lithuanian legal system, impeachment is a constitutional institution. Article 74 of the Constitution prescribes: "The President of the Republic, the President and justices of the Constitutional Court, the President and justices of the Supreme Court, the President and judges of the Court of Appeal, as well as any Members of the Seimas, who grossly violate the Constitution or breach their oath, or are found to have committed a crime, may be removed from office or have the mandate of a Member of the Seimas revoked by a 3/5 majority vote of all the Members of the Seimas. This shall be performed according to the procedure for impeachment proceedings, which shall be established by the Statute of the Seimas."

Some other articles of the Constitution are also important to the impeachment institution: Item 5 of Article 63, Paragraph 2 of Article 86, Item 5 of Article 88, Paragraph 1 of Article 89, Article 105, Item 5 of Article 108, and Article 116. The norms of these articles serve as the constitutional grounds for the impeachment institution.

The following elements of impeachment are established in Article 74 of the Constitution: (1) impeachment as a parliamentary procedure may be applied only to the President of the Republic, the President and justices of the Constitutional Court, the President and justices of the Supreme Court, the President and judges of the Court of Appeal, as well as members of the Seimas; (2) impeachment proceedings may be instituted only for gross violations of the Constitution, a breach of the oath, or when the aforementioned persons are found to have committed a crime; (3) the objective of impeachment proceedings is to decide the question of the constitutional responsibility of the said persons; (4) impeachment is carried out by the Seimas; (5) to remove a person from office or to revoke his/her mandate of a member of the Seimas, a 3/5 majority vote of all the members of the Seimas is necessary.

Under Article 74 of the Constitution, the establishment of the procedure for impeachment proceedings is also within the competence of the Seimas: …

[…]

The provision "according to the procedure for impeachment proceedings, which shall be established by the Statute of the Seimas" presumes the discretion of the Seimas in this sphere. Several grounds for impeachment are established in Article 74 of the Constitution; therefore, the Statute of the Seimas may establish such a procedure for impeachment that would take account of the differences in the constitutional grounds for impeachment. The conformity of the procedure for impeachment with the Constitution depends on whether the Seimas, establishing the particularities of impeachment proceedings, diverges from the constitutional concept of the said procedure.

… the Constitution does not obligate the Seimas to design every particular procedure for impeachment under a single model: other procedures for impeachment may also be established in the Statute of the Seimas; such procedures may apply in specific cases, including those when the actual circumstances of a case are already established by a court.

It needs to be noted that the possibility of regulating the particularities of impeachment proceedings is also determined by the provision of Paragraph 2 of Article 62 of the Constitution, by which members of the Seimas may not be held criminally liable without the consent of the Seimas. The Constitution provides for analogous guarantees for the President of the Constitutional Court and its justices, the President of the Supreme Court and its justices, and the President of the Court of Appeal and its judges.

Impeachment as a parliamentary procedure is only applied to the persons listed in Article 74 of the Constitution. …

Under Article 74 of the Constitution, one of the grounds for impeachment is "found to have committed a crime". The phrase "found to have committed a crime" of Article 74 of the Constitution presumes that it transpires that a crime was committed and that the official who committed it was identified. …

[…]

… In a state under the rule of law, every branch of power (legislative, executive, or judicial) fulfils the functions vested in it and carries out its competence. Paragraph 1 of Article 109 of the Constitution provides that, in Lithuania, justice is administered only by courts, whereas, under Article 74 of the Constitution, the Seimas is commissioned to carry out impeachment. When voting on impeachment takes place at the Seimas, the question of the constitutional responsibility, but not that of the criminal responsibility of a person is decided. The removal of a person from office or the revocation of his/her mandate of a member of the Seimas through impeachment proceedings because of the suspicion that he/she has committed a crime is not binding on a court. In its turn, the independence of legislative power and judicial power established in the Constitution determines the fact that a judgment handed down by a court is not binding on the Seimas that adopts a decision on the constitutional responsibility of a person. Otherwise, the constitutional principle of the separation of powers would be violated.

… Giving its consent to hold a person criminally liable, the Seimas also decides that the actual circumstances of the case will be investigated by the judicial institutions – the interrogation and a court – but not by any special investigation commission formed by the Seimas. This means that, if a court recognises that the said person is guilty of committing a crime, it will not be necessary later to submit a separate motion to institute impeachment because of the commission of a crime. It needs to be noted that a formal statement of charges as an independent action, when this is done by members of the Seimas themselves, is not, in this case, a necessary element of impeachment proceedings; however, this would be in line with the constitutional practice of many states.

The constitutional concept of impeachment implies that the objective of impeachment proceedings is the decision of the question of the constitutional responsibility of the persons listed in Article 74 of the Constitution. It is the Seimas that decides on the constitutional sanction no matter whether it conducts the full impeachment proceedings or entrusts the interrogation and a court with the establishment of the actual circumstances of a case. Even in cases where a court has passed a convicting judgment, the constitutional sanction, i.e. the removal of a person from office or the revocation of his/her mandate of a member of the Seimas, is not applied of its own accord. A person is removed from office or his/her mandate of a member of the Seimas is revoked when the qualified majority, i.e. 3/5 of all the members of the Seimas, vote for this.

The responsibility of the authorities to society; impeachment (Article 74 of the Constitution)

The Constitutional Court's conclusion of 31 March 2004

In a democratic state under the rule of law, all state institutions and all officials must follow the Constitution and law. The responsibility of the authorities to society is inseparable from the constitutional principle of a state under the rule of law; the said responsibility is constitutionally consolidated by stipulating that state institutions serve the people, that the scope of powers is limited by the Constitution, that state officials who violate the Constitution and laws, who raise personal or group interests above the interests of society, or bring discredit on state power by their actions may be removed from office under the procedure established in laws.

Impeachment is a special procedure provided for in the Constitution, when the issue of the constitutional responsibility of the high state officials indicated in Article 74 of the Constitution is decided, i.e. their removal from office for the following actions provided for in the Constitution: a gross violation of the Constitution, a breach of the oath, or the commission of a crime.

Under the Constitution, the President of the Republic is among those state officials who may be removed from office through impeachment proceedings.

[…]

It needs to be noted that the possibility consolidated in the Constitution to remove the President of the Republic from office through impeachment proceedings is a form of public and democratic control over the activities of the President of the Republic, a manner of the constitutional responsibility of the President of the Republic before the Nation, and one of the means of the self-defence of democratic civil society against the abuse of authority by the President of the Republic. Under Article 74 of the Constitution, it is permitted to institute impeachment proceedings against the President of the Republic only for a gross violation of the Constitution, a breach of the oath, or if he/she is found to have committed a crime; only the Seimas may remove the President of the Republic from office, when this is done in accordance with the procedure established in the Statute of the Seimas; the President of the Republic is removed from office only when not less than 3/5 of all the members of the Seimas vote for this.

The powers of the Seimas and of the Constitutional Court in impeachment proceedings (Item 4 of Paragraph 3 of Article 105 and Paragraph 3 of Article 107 of the Constitution)

The Constitutional Court's conclusion of 31 March 2004

Under Item 4 of Paragraph 3 of Article 105 of the Constitution, the Constitutional Court presents a conclusion on whether the concrete actions of members of the Seimas and state officials against whom an impeachment case has been instituted are in conflict with the Constitution. … under Article 74 of the Constitution, the President of the Republic is among those state officials who may be removed from office through impeachment proceedings.

Paragraph 3 of Article 107 of the Constitution stipulates that, on the basis of the conclusions of the Constitutional Court, the Seimas takes a final decision on the issues specified in Paragraph 3 of Article 105 of the Constitution.

While disclosing the content of the legal regulation established in Item 4 of Paragraph 3 of Article 105 and Paragraph 3 of Article 107 of the Constitution, consideration must be given to the provisions of Article 74 of the Constitution, the provisions of Paragraph 2 of Article 5 of the Constitution, and the constitutional principles of the separation of powers and of a state under the rule of law.

… the Constitution is an integral act … all provisions of the Constitution are interrelated and constitute a harmonious whole and … it is not permitted to interpret any norm of the Constitution by disregarding other provisions of the Constitution. In interpreting the Constitution, the linguistic method of interpretation alone may not be applied: it is necessary to make use of the systemic, logical, teleological, and other methods of interpreting law.

It has … been mentioned that, under Item 4 of Paragraph 3 of Article 105 of the Constitution, the Constitutional Court presents a conclusion on whether the concrete actions of the President of the Republic against whom an impeachment case has been instituted are in conflict with the Constitution; Paragraph 3 of Article 107 of the Constitution stipulates that, on the basis of the conclusions of the Constitutional Court, the Seimas takes a final decision on the issues specified in Paragraph 3 of Article 105 of the Constitution.

Interpreting the said provisions of the Constitution only linguistically and in isolation from other provisions of the Constitution that consolidate the institution of impeachment and the powers of both the Seimas and the Constitutional Court in impeachment proceedings, it might appear that it is possible to assert that, purportedly, the Constitution provides for the legal regulation whereby the Constitutional Court presents a conclusion on whether the concrete actions of the President of the Republic against whom an impeachment case has been instituted are in conflict with the Constitution, while the Seimas takes a final decision whether the actions of the President of the Republic are in conflict with the Constitution.

However, such an interpretation of the aforesaid provisions of the Constitution would be constitutionally groundless.

It needs to be noted that the principle of the separation of powers, which is consolidated in the Constitution, means, *inter alia*, that, if the Constitution directly establishes the powers of a concrete state institution, no state institution may take over such powers from another state institution, or transfer or waive them; such powers may not be changed or limited by means of a law.

Under Item 4 of Paragraph 3 of Article 105 of the Constitution, the Constitutional Court presents a conclusion on whether the concrete actions of the President of the Republic against whom an impeachment case has been instituted are in conflict with the Constitution. Paragraph 2 of Article 107 of the Constitution provides that the decisions of the Constitutional Court on the issues assigned to its competence by the Constitution are final and not subject to appeal. The presentation of the conclusion specified in Item 4 of Paragraph 3 of Article 105 of the Constitution is one of such issues that, under the Constitution, fall only within the competence of the Constitutional Court. Thus, under the Constitution, a conclusion on whether the concrete actions of the President of the Republic against whom an impeachment case has been instituted are in conflict with the Constitution is final and not subject to appeal.

It has been mentioned that, under Paragraph 3 of Article 107 of the Constitution, on the basis of the conclusions of the Constitutional Court, the Seimas takes a final decision on the issues specified in Paragraph 3 of Article 105 of the Constitution. Assessing the interrelation of the provisions of Item 4 of Paragraph 3 of Article 105 and Paragraph 3 of Article 107 of the Constitution, it is impossible to disregard the provisions of Article 74 of the Constitution, according to which the Seimas may, by a 3/5 majority vote

of all the members of the Seimas, remove the President of the Republic from office for a gross violation of the Constitution, a breach of the oath, or if he/she is found to have committed a crime.

The provision of Paragraph 3 of Article 107 of the Constitution that, on the basis of the conclusions of the Constitutional Court, the Seimas takes a final decision on the issues set forth in Paragraph 3 of Article 105 of the Constitution, means that, in cases where impeachment proceedings are instituted against the President of the Republic for a gross violation of the Constitution, the Seimas has the duty to apply to the Constitutional Court and to request a conclusion on whether the actions of the President of the Republic are in conflict with the Constitution. …

The provision of Paragraph 2 of Article 107 of the Constitution, whereby the decisions of the Constitutional Court on the issues assigned to its competence by the Constitution are final and not subject to appeal, also means that, when deciding whether or not to remove the President of the Republic from office, the Seimas may not reject, question, or change the Constitutional Court's conclusion that the concrete actions of the President of the Republic are (or are not) in conflict with the Constitution. No such powers are assigned to the Seimas by the Constitution. The Constitutional Court's conclusion that the concrete actions of the President of the Republic are in conflict (or are not in conflict) with the Constitution is binding on the Seimas insofar as the Constitution does not empower it to decide whether the conclusion of the Constitutional Court is well founded and legal – it is only the Constitutional Court that may establish the legal fact that the actions of the President of the Republic are (or are not) in conflict with the Constitution.

Under Article 74 of the Constitution, it is only the Seimas that can remove the President of the Republic from office for a gross violation of the Constitution.

Thus, the Constitution provides for the different functions of the Seimas and of the Constitutional Court in impeachment proceedings, and establishes particular powers necessary to implement these functions: the Constitutional Court decides whether the concrete actions of the President of the Republic are in conflict with the Constitution and presents a conclusion to the Seimas (Item 4 of Paragraph 3 of Article 105 of the Constitution), while the Seimas, if the President of the Republic grossly violated the Constitution, decides whether to remove the President of the Republic from office (Article 74 of the Constitution). Thus, the provision of Paragraph 3 of Article 107 of the Constitution, whereby the Seimas takes a final decision on the issues set forth in Paragraph 3 of Article 105 of the Constitution, in conjunction with the provision of Article 74 of the Constitution, according to which only the Seimas decides the issue of the removal of the President of the Republic from office through impeachment proceedings, and in conjunction with the provision of Paragraph 2 of Article 107 of the Constitution, under which the conclusion of the Constitutional Court is final and not subject of appeal, means that, under Paragraph 3 of Article 107 of the Constitution, the Seimas has the powers to decide whether to remove the President of the Republic from office, but does not have the powers to decide whether the concrete actions of the President of the Republic are in conflict with the Constitution.

It should be noted that the constitutional provision whereby only the Constitutional Court has the powers to decide (through its conclusions on the matter) whether the concrete actions of the President of the Republic are in conflict with the Constitution consolidates the guarantee for the President of the Republic that he/she will not be held constitutionally liable unreasonably. Thus, if the Constitutional Court reaches the conclusion that the actions of the President of the Republic are not in conflict with the Constitution, the Seimas may not remove the President of the Republic from office for a gross violation of the Constitution.

A gross violation of the Constitution as grounds for impeachment (Article 74 of the Constitution)

The Constitutional Court's conclusion of 31 March 2004

… under the Constitution, the Constitutional Court presents a conclusion on whether concrete actions of the President of the Republic are in conflict with the Constitution. The statement that the actions of the President of the Republic are in conflict with the Constitution also means that the President of the Republic violated the Constitution. However, not every violation of the Constitution is in itself a gross violation of the Constitution.

It needs to be emphasised that, when deciding whether the actions of the President of the Republic have grossly violated the Constitution, it is necessary to assess, in each case, the content of the concrete actions of the President of the Republic, as well as the circumstances of their performance.

In its ruling of 30 December 2003, the Constitutional Court held that the Constitution is grossly violated in all cases when the President of the Republic breaches the oath.

The Constitution would be violated grossly by the actions of the President of the Republic in cases where the President of the Republic would hold office in bad faith, would act not in the interests of the Nation and the state but in his/her personal interests, those of individual persons or their groups, would act for other purposes and in other interests that are incompatible with the Constitution, laws, and public interests, or would knowingly fail to perform the duties established for the President of the Republic in the Constitution and laws.

… under the Constitution, only the Constitutional Court has the powers to decide whether the concrete actions of the President of the Republic are in conflict with the Constitution, thus, whether the President of the Republic violated the Constitution; the Constitution does not provide for such powers for the Seimas. The Seimas, having no powers to adopt a decision whether the President of the Republic violated the Constitution, does not have the constitutional powers to decide whether the President of the Republic grossly violated the Constitution. The establishment of a violation of the Constitution is a matter of a legal, but not political, assessment; therefore, the legal issues – the fact of a violation of the Constitution, thus, also that of a gross violation of the Constitution, can only be established by the institution of judicial power – the Constitutional Court. The interpretation that the Seimas may establish the fact of a gross violation of the Constitution would constitutionally be groundless, since this would mean that the legal issue whether the President of the Republic violated the Constitution, whether the Constitution has been violated grossly, could be decided not by the institution of judicial power – the Constitutional Court, which, as all other courts, is formed on a professional basis, but by the Seimas, an institution of state power that, by its nature and essence, is an institution of a political character, whose decisions reflect the political will of the majority of the members of the Seimas, whose decisions are based on political agreements, various political compromises, etc. It is evident that the Seimas, an institution of a political character, may not decide whether the President of the Republic violated the Constitution, whether the violation of the Constitution is a gross one, i.e. it may not decide an issue of law. Otherwise, the statement of the fact of a violation of the Constitution and that of a gross violation of the Constitution could be based on political arguments, while the constitutional responsibility of the President of the Republic might arise from the statement that the Constitution has grossly been violated where such a statement would be based on political arguments. The Constitution contains such a legal regulation whereby only the Constitutional Court has the powers to decide whether the President of the Republic violated the Constitution, and whether the violation of the Constitution is a gross one. The Seimas, any other state institution, or any state official are not granted such powers under the Constitution.

It needs to be noted that the constitutional regulation under which only the Constitutional Court has the powers to decide whether the President of the Republic grossly violated the Constitution is the constitutional guarantee for the President of the Republic that constitutional responsibility – removal from office for a gross violation of the Constitution – will not be applied against him/her unreasonably.

… under Article 74 of the Constitution, it is only the Seimas that decides whether to remove the President of the Republic from office for a gross violation of the Constitution, a breach of the oath, or when he/she is found to have committed a crime. If the grounds for impeachment are a gross violation of the Constitution, the Seimas may decide the issue of the removal of the President of the Republic from office only after receiving the conclusion of the Constitutional Court that the President of the Republic grossly violated the Constitution. This is the constitutional guarantee for the President of the Republic that constitutional responsibility will not be applied against him/her unreasonably.

It needs to be noted that, under the Constitution, during impeachment proceedings at the Seimas, neither the fact whether actions of the President of the Republic are in conflict with the Constitution nor the fact

whether the President of the Republic grossly violated the Constitution is decided. Under the Constitution, this is decided exclusively by the Constitutional Court. During impeachment proceedings at the Seimas, only the question of the constitutional responsibility of the President of the Republic is decided, i.e. only the question whether to remove the President of the Republic from office for a gross violation of the Constitution. The removal of the President of the Republic from office is a constitutional sanction for a gross violation of the Constitution. It has been mentioned that, under Article 74 of the Constitution, it is only the Seimas that may adopt a decision on the application of the constitutional sanction, i.e. on the removal of the President of the Republic from office.

Impeachment proceedings in the Seimas (Article 74 of the Constitution)

The Constitutional Court's conclusion of 31 March 2004

Under Article 74 of the Constitution, the procedure for impeachment proceedings is established by the Statute of the Seimas. Article 76 of the Constitution provides that the Statute of the Seimas has the force of a law.

It needs to be noted that the Seimas has discretion in implementing the procedure for impeachment proceedings; however, it is bound by the constitutional concept of impeachment (ruling of 11 May 1999). Therefore, the procedure of impeachment proceedings established in the Statute of the Seimas must be such that fair legal proceedings would be ensured in order to properly investigate the circumstances of an impeachment case and adopt a just decision on the constitutional responsibility of a person. The norms regulating impeachment must not only create the possibility of removing a person from office, but also to ensure the rights of impeached persons.

[…]

… Under Paragraph 2 of Article 107 of the Constitution, a conclusion of the Constitutional Court is final and not subject to appeal; therefore, it is evident that the part of impeachment proceedings … i.e. interrogation, as well as the legal norms … regulating interrogation, may be applied only when the grounds for impeachment are not a gross violation of the Constitution or a breach of the oath, but when the grounds for impeachment are "found to have committed a crime", and provided that there is no effective convicting court judgment in regard of an impeached person. Taking account of the fact that, under Paragraph 1 of Article 86 of the Constitution, the President of the Republic, while in office, may be neither detained nor held criminally liable, the conclusion should be drawn that interrogation as part of impeachment proceedings is possible only when the President of the Republic is held constitutionally liable on the basis established in Article 74 of the Constitution, i.e. when he/she is found to have committed a crime, also, when, on the same basis, i.e. when they are found to have committed a crime, the other subjects specified in Article 74 of the Constitution are held constitutionally liable provided that there are no effective convicting court judgments in their regard. …

In its ruling of 11 May 1999, the Constitutional Court held that the constitutional concept of impeachment implies fair judicial proceedings in which priority is given to the protection of the rights of individuals. 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. Since the Seimas, deciding the question of removing a person from office or that of revoking his/her mandate, acts as a jurisdictional institution, impeachment proceedings are subject to the same requirements. In the same ruling, the Constitutional Court noted that, when the question of constitutional or any other responsibility is decided, the aforesaid principles of a state under the rule of law are implemented

through the procedural rights of a person against whom this sanction is applied and through the guarantees of such rights. The recognition of the rights of an individual is a necessary element of the rule of law. In the course of impeachment in the Seimas, it is necessary to ensure the right of a person whose constitutional responsibility is decided to take part in the proceedings and to defend himself/herself. Before adopting its decision, the Seimas must also hear the other party *(audi alteram partem)*.

In view of the fact that, in the course of impeachment proceedings in the Seimas, the fact whether the concrete actions of the President of the Republic are in conflict with the Constitution or the fact whether the President of the Republic violated the Constitution grossly is not decided (under the Constitution, this can be decided only by the Constitutional Court) – in other words, only the fact whether to remove the President of the Republic from office for a gross violation of the Constitution is decided during impeachment proceedings in the Seimas; therefore, the conclusion should be drawn that, in the course of impeachment proceedings in the Seimas, only the evidence that confirms or denies the necessity to remove the President of the Republic from office for a gross violation of the Constitution is investigated; however, the evidence that confirms or denies the fact that the President of the Republic performed the actions by which he/she grossly violated the Constitution is not investigated during impeachment proceedings in the Seimas. …

The Constitutional Court notes that the right of the President of the Republic, the issue of whose constitutional responsibility is decided in accordance with impeachment proceedings in the Seimas, to participate in the proceedings, to give explanations, and to defend himself/herself must not be restricted. This right must be ensured.

The powers of the Constitutional Court to investigate and assess evidence in impeachment proceedings

The Constitutional Court's conclusion of 31 March 2004

Under the Constitution, it is only the Constitutional Court that has the powers to decide whether the concrete actions of the President of the Republic against whom an impeachment case has been instituted are in conflict the Constitution, and whether the President of the Republic has grossly violated the Constitution. Thus, the constitutional duty is established for the Constitutional Court to investigate whether the President of the Republic performed the concrete actions pointed out in the charge brought against him/her, to assess whether these actions are in conflict with the Constitution and whether the Constitution was grossly violated. When investigating whether the concrete actions of the President of the Republic are in conflict with the Constitution and whether the Constitution was grossly violated, the Constitutional Court investigates and assesses the evidence provided to the Constitutional Court along with the inquiry, as well as all other evidence received in the course of the investigation of the case at the Constitutional Court, where the said evidence confirms or denies the fact that the President of the Republic performed the concrete actions specified in the inquiry, or confirms or denies the fact that these actions are in conflict with the Constitution or the fact that the Constitution was grossly violated.

The state institutions participating in impeachment proceedings (Article 74 and Item 4 of Paragraph 3 of Article 105 of the Constitution)

The Constitutional Court's ruling of 15 April 2004

… impeachment is a special parliamentary procedure provided for in the Constitution when the issue of the constitutional responsibility of the President of the Republic, the President and justices of the Constitutional Court, the President and justices of the Supreme Court, the President and judges of the Court of Appeal, or of members of the Seimas is decided. Article 74 of the Constitution provides that only the Seimas may remove these persons from office or revoke the mandate of a member of the Seimas.

It needs to be noted that, under the Constitution, in order that constitutional responsibility would be applied reasonably, in cases where impeachment proceedings against the President of the Republic, the President and justices of the Constitutional Court, the President and justices of the Supreme Court, the

President and judges of the Court of Appeal, or members of the Seimas are instituted because of a gross violation of the Constitution or a breach of the oath, the Seimas must apply to the Constitutional Court, requesting a conclusion whether concrete actions of a member of the Seimas or those of a state official against whom an impeachment case has been instituted are in conflict with the Constitution. The Seimas may decide the issue of removing this person from office or that of the revocation of the mandate of a member of the Seimas only after it receives the conclusion of the Constitutional Court that the concrete actions of a member of the Seimas or those of a state official against whom an impeachment case has been instituted are in conflict with the Constitution (Item 4 of Paragraph 3 of Article 105 of the Constitution).

Thus, under the Constitution, only two institutions of state power have the powers in impeachment proceedings, i.e. the Seimas and the Constitutional Court. According to the Constitution, the Constitutional Court decides (presents a conclusion) whether the concrete actions of a member of the Seimas or those of a state official against whom an impeachment case has been instituted are in conflict with the Constitution and whether the Constitution has been violated grossly by these actions, whereas the Seimas decides, under the procedure for impeachment proceedings, whether to remove such a person from office (to revoke the mandate of a member of the Seimas).

… under Article 74 of the Constitution, one of the grounds for impeachment is "found to have committed a crime". It should be noted that it is permitted to stipulate in the Statute of the Seimas, while paying regard to the concept of impeachment consolidated in the Constitution, that, in cases where the fact of the commission of a crime is clear, the Seimas, when it conducts impeachment, may state such a fact without an investigation carried out by legal institutions. In its 11 May 1999 ruling, the Constitutional Court stated that "the removal of a person from office or the revocation of his/her mandate of a member of the Seimas through impeachment proceedings because of the suspicion that he/she has committed a crime is not binding on a court". It also needs to be noted that, in cases where the fact of the commission of a crime is not clear, the Seimas, under the Constitution, may not conduct impeachment on the grounds of the fact of the commission of a crime as long as a convicting court judgment has not been adopted and gone into effect.

Thus, the Constitution consolidates such a concept of impeachment where the Seimas conducts impeachment, while the Constitutional Court presents a conclusion on whether the concrete actions of a member of the Seimas or those of a state official against whom an impeachment case has been instituted are in conflict with the Constitution. No other institutions are granted powers by the Constitution to participate in the conduct of impeachment.

The initiation of impeachment (Article 74 of the Constitution)

The Constitutional Court's ruling of 15 April 2004

It has been mentioned that, under the Constitution, the Seimas conducts impeachment, while the Constitutional Court presents a conclusion on whether concrete actions of a state official or a member of the Seimas against whom an impeachment case has been instituted are in conflict with the Constitution. No other institutions are granted powers by the Constitution to participate in the conduct of impeachment.

The first stage of impeachment proceedings is the initiation of impeachment. Article 74 of the Constitution provides that the procedure for impeachment proceedings is established by the Statute of the Seimas. Under Article 76 of the Constitution, the structure and procedure of activities of the Seimas are established by the Statute of the Seimas. … according to the Constitution, impeachment proceedings take place in the Seimas and no state institution is permitted to interfere with the constitutional powers of the Seimas to conduct impeachment if this is not provided for in the Constitution. This implies that impeachment may be initiated only in the Seimas, that, it should be emphasised, the initiative of impeachment may come only from members of the Seimas. It needs to be noted that, when account is taken of the importance of the constitutional institute of impeachment as a means of self-defence of the civil Nation, where the said means is applied by the Seimas, also of the fact that impeachment may be applied against high state officials, only a sufficiently large group of members of the Seimas may have the right to initiate impeachment proceedings.

On the other hand, if a too large number of members of such a group of members of the Seimas were established, the democratic nature of the impeachment institution would be denied.

It needs to be noted that, if, when laying down the initiation of impeachment, the Statute of the Seimas stipulated that impeachment may be initiated not in the Seimas, that the initiative of impeachment may rise not from members of the Seimas, that other state institutions may propose that impeachment be instituted, then the constitutional concept of impeachment would be disregarded and the constitutional prerogative of the Seimas to conduct impeachment would be interfered with.

In this context, it should be noted that the legal regulation of the initiation of impeachment in the Statute of the Seimas may, according to the Constitution, have particularities in cases where a convicting court judgment is adopted and is effective in regard of a certain person. In its ruling of 11 May 1999, the Constitutional Court held that such a regulation of impeachment procedure where this is done by members of the Seimas themselves is not the only form possible for initiating impeachment proceedings. Giving its consent to hold a person criminally liable, the Seimas also decides that the actual circumstances of the case will be investigated by the judicial institutions – the interrogation and a court – but not by any special investigation commission formed by the Seimas. This means that, if a court recognises that the said person is guilty of committing a crime, it will not be necessary later to submit a separate motion to institute impeachment because of the commission of a crime. A formal statement of charges as an independent action, when this is done by members of the Seimas themselves, is not, in this case, a necessary element of impeachment proceedings.

It needs to be emphasised that, after the Seimas receives an effective convicting court judgment, such a court judgment and decisions of other courts adopted in the course of the consideration of a criminal case are not deliberated at the time of the impeachment proceedings conducted in the Seimas, nor are their lawfulness or reasonableness discussed. In such a case, the Seimas decides only the issue of removing a certain state official from office (revoking the mandate of a member of the Seimas).

The responsibility of state officials to society; impeachment (Article 74 of the Constitution)

The Constitutional Court's ruling of 25 May 2004

Where state officials perform their functions while observing the Constitution and law and acting in the interests of the Nation and the State of Lithuania, they must be protected against any pressure and unjustified interference with their activities, and, where they conscientiously perform their duties, they must not be subject to any threats directed against their person, rights, or freedoms. State officials must have the confidence of the citizens – the national community. However, in order that the citizens – the national community – could reasonably trust state officials so that it would be possible to ascertain that all state institutions and all state officials follow the Constitution and law and obey them, and that those who do not obey the Constitution and law would not hold the office for which the confidence of the citizens – the national community – is needed, it is necessary to ensure public democratic control over the activity of the state officials and their accountability to society comprising, *inter alia*, the possibility of removing from office those state officials who violate the Constitution and law, who bring their personal interests or the interests of a certain group above the public interests, or who bring discredit on state authority by their actions. One of the forms of such public democratic control is the constitutional institution of impeachment: certain top officials of state power – the President of the Republic, the President and justices of the Constitutional Court, the President and justices of the Supreme Court, the President and judges of the Court of Appeal – for a gross violation of the Constitution, a breach of the oath, or when they are found to have committed a crime, may be removed from office or the mandate of a member of the Seimas may revoked according to the procedure for impeachment proceedings. The application of the institution of impeachment – a special parliamentary procedure and the constitutional sanction of removal from office, which is consolidated in the Constitution, in respect of the President of the Republic, the President and justices of the Constitutional Court, the President and justices of the Supreme Court, and the President and

judges of the Court of Appeal – is one of the measures of the self-protection of the national community, the civil Nation, a way of its own defence from the aforesaid high officials of state power if they ignore the Constitution and law where they are prohibited from holding certain office, as they do not fulfil their obligation unconditionally to follow the Constitution and law and to follow the interests of the Nation and the State of Lithuania, and who bring discredit on state authority by their actions.

[…]

… impeachment is a special parliamentary procedure, when the high state officials indicated in Article 74 of the Constitution are removed from office: under Article 74 of the Constitution, the President of the Republic, the President and justices of the Constitutional Court, the President and justices of the Supreme Court, the President and judges of the Court of Appeal may be removed from office or the mandate of a member of the Seimas may be revoked in accordance with the procedure for impeachment proceedings. It needs to be stressed that impeachment is possible only if there are the grounds indicated in Article 74 of the Constitution: a gross violation of the Constitution, a breach of the oath, or when the specified persons are found to have committed a crime.

In its ruling of 15 April 2004, the Constitutional Court held that, under the Constitution, two institutions of state power have the powers in impeachment proceedings, i.e. the Seimas and the Constitutional Court. Each of these state institutions are assigned, under the Constitution, the powers that are in line with their functions in impeachment proceedings: an impeachment case may be instituted only on a motion (initiative) of members of the Seimas; a conclusion on whether the concrete actions of a person against whom an impeachment case has been instituted are in conflict with the Constitution is presented by the Constitutional Court; if the Constitutional Court draws the conclusion that a person against whom an impeachment case has been instituted has grossly violated the Constitution, the Seimas may remove such a person from office or may revoke his/her mandate of a member of the Seimas by not less than 3/5 majority vote of all the members of the Seimas.

Under the Constitution, only the Constitutional Court has the powers to decide whether the persons specified in Article 74 of the Constitution, against whom an impeachment procedure has been initiated, have grossly violated the Constitution (in view of the fact that a gross violation of the Constitution constitutes also a breach of the oath, it has the powers to decide whether such persons breached the oath). The conclusion of the Constitutional Court that a person has grossly violated the Constitution (and, thus, has also breached the oath) is final. No other state institution, no other state official, and no other subject may change or revoke such a conclusion of the Constitutional Court. Under the Constitution, such a conclusion may not be changed or revoked by referendum, by election, or in any other way.

Article 2 of the Constitution provides that sovereignty belongs to the Nation. Article 4 of the Constitution stipulates that the Nation executes its supreme sovereign power either directly or through its democratically elected representatives. According to Paragraph 1 of Article 55 of the Constitution, members of the Seimas are representatives of the Nation. Thus, under the Constitution, only the Seimas is the representation of the Nation, through which the Nation executes its supreme sovereign power. It should be stressed that, according to the Constitution, there must not be and there is no confrontation between the supreme sovereign power executed by the Nation directly and the supreme sovereign power executed by the Nation through its democratically elected representatives – members of the Seimas. Thus, under the Constitution, there must not be and there is no confrontation between the Nation and its representation – the Seimas: the Seimas implements those powers that have been assigned to it by the Nation in the Constitution adopted by the Nation.

According to the Constitution, if there are the grounds provided for in Article 74 of the Constitution, only the Seimas has the powers to decide whether to remove a person from office or to revoke his/her mandate of a member of the Seimas according to the procedure for impeachment proceedings – these issues may not be decided by referendum or election, and these issues may not be decided by any other state institution, state official, or other subject.

The Seimas, as the representation of the Nation, through which the Nation executes its supreme sovereign power, acts according to the powers pursuant to the Constitution vested in the Seimas by the Nation. Consequently, a decision of the Seimas as the representation of the Nation to remove from office a state official indicated in Article 74 of the Constitution, or to revoke the mandate of a member of the Seimas according to the procedure for impeachment proceedings is, at the same time, the execution of the sovereign powers of the Nation through its democratically elected representatives. Since, under the Constitution, only the Seimas may decide whether to remove from office a certain state official specified in Article 74 of the Constitution, or to revoke the mandate of a member of the Seimas according to the procedure for impeachment proceedings, such a decision of the Seimas may not be changed or revoked by referendum, by election, or in any other way. Consequently, if the Seimas, while following the Constitution, removes from office a state official specified in Article 74 of the Constitution or revokes his/her mandate of a member of the Seimas through impeachment proceedings, such a decision of the Seimas is final.

The President of the Republic is among those state officials indicated in Article 74 of the Constitution who may be removed from office by the Seimas according to the procedure for impeachment proceedings. The impeachment of the President of the Republic in the Seimas is not a legal dispute between the President of the Republic, one of the institutions executing state power, and the Seimas, another institution executing state power. The impeachment of the President of the Republic is a manner of the constitutional responsibility of a person who holds the office of the President of the Republic to the Nation: the Nation through its representation, the Seimas, decides whether a person holding the office of the President of the Republic who has grossly violated the Constitution, breached the oath, or committed a crime should be removed from office.

A gross violation of the Constitution or a breach of the oath undermines the trust in the institution of the President of the Republic and, at the same time, weakens the trust in state authority as a whole and in the State of Lithuania. Impeachment, when a person who has grossly violated the Constitution or breached the oath is removed from the office of the President of the Republic, is one of the ways of the protection of the state as the common good of all society, as provided for in the Constitution.

It needs to be stressed that, under the Constitution, a person in respect of whom the Seimas, following the conclusion of the Constitutional Court that the President of the Republic has committed a gross violation of the Constitution and breached the oath, has applied the constitutional sanction – removal from office, may not escape constitutional responsibility through a new election of the President of the Republic, by a referendum, or by any other means. It should also be stressed that, under the Constitution, neither a referendum nor a new election of the President of the Republic may be and is a way of expressing the trust or mistrust of the citizens in the Seimas after it removes from office the President of the Republic through impeachment proceedings.

Under the Constitution, only the Seimas has the powers to decide whether to remove from office the President of the Republic through impeachment proceedings for a gross violation of the Constitution, a breach of the oath, or the commission of a crime. When evaluating the relationship between the constitutional powers of the Constitutional Court and the Seimas during the impeachment procedure, it needs to be noted that the conclusion of the Constitutional Court that the actions of the President of the Republic are (are not) in conflict with the Constitution is binding on the Seimas insofar as the Constitution does not empower the Seimas to decide whether the conclusion of the Constitutional Court is well founded and lawful – it is only the Constitutional Court that may establish the legal fact that the actions of the President of the Republic are (or are not) in conflict with the Constitution (conclusion of 31 March 2004). Although members of the Seimas, when deciding the issue of the removal of the President of the Republic from office for a gross violation of the Constitution, or a breach of the oath, vote freely, still, this does not mean that members of the Seimas, when deciding whether to remove the President of the Republic from office for a gross violation of the Constitution, or a breach of the oath through impeachment proceedings, are not bound by the oath of a member of the Seimas taken by them, which obligates a member of the Seimas in his/her activity to follow the Constitution, the interests of the state, and his/her conscience, and not to be bound by any mandates. The

free mandate of a member of the Seimas, which is consolidated in the Constitution, may not be understood as permission for a member of the Seimas always to act at discretion, to follow his/her conscience, and to ignore the Constitution. The Constitution implies such a notion of the discretion of a member of the Seimas and the conscience of a member of the Seimas whereby no gap must exist between the discretion of a member of the Seimas and the conscience of a member of the Seimas, on the one hand, and the requirements of the Constitution, as well as the values protected and defended by the Constitution, on the other hand: according to the Constitution, the discretion of a member of the Seimas and his/her conscience must be oriented towards the Constitution and the interests of the Nation and the State of Lithuania. Therefore, an especially great responsibility is borne by the Seimas when deciding whether to remove from office the President of the Republic through impeachment proceedings for a gross violation of the Constitution and a breach of the oath: in a democratic state under the rule of law, a person who grossly violates the Constitution or breaches the oath must not escape constitutional responsibility – removal from office.

The prohibition preventing persons removed from office through impeachment proceedings from entering office that requires taking an oath

The Constitutional Court's ruling of 25 May 2004

The Constitution does not provide that, upon the lapse of a certain period of time, the President of the Republic whose actions were declared by the Constitutional Court to have grossly violated the Constitution and he/she himself was declared to have breached the oath, and was removed from office by the Seimas for a breach of the oath and a gross violation of the Constitution, could be treated as one who has not breached the oath or as one who has not grossly violated the Constitution. Under the Constitution, the President of the Republic whose actions were declared by the Constitutional Court as those that grossly violated the Constitution and who has been removed from office through impeachment proceedings by the Seimas, the representation of the Nation, will always remain a person who breached his/her oath to the Nation and grossly violated the Constitution and who was dismissed as the President of the Republic for this reason.

… the Constitution consolidates such an organisation of institutions executing state power and such a procedure for their formation where all institutions executing state power, as well as other institutions, must be formed only from such citizens who without reservations obey the Constitution adopted by the Nation and who, while in office, unconditionally follow the Constitution, law, and the interests of the Nation and the State of Lithuania. … the elected President of the Republic, according to the Constitution, may begin to hold office only after he/she takes an oath to the Nation to be faithful to the Republic of Lithuania and the Constitution, to conscientiously perform the duties of his/her office, and to be equally just to all.

Under the Constitution, a person who was elected as the President of the Republic, who took the oath of the President of the Republic to the Nation, and subsequently breached this oath and, thus, grossly violated the Constitution, and who, on that account, was removed from office through impeachment proceedings by the Seimas, the representation of the Nation, may not take an oath to the Nation once again, as there would always exist a reasonable doubt, which would never disappear, regarding the certainty and reliability of the repeatedly taken oath; thus, the doubts would always remain as to whether this person would really perform his/her duties of the President of the Republic in the manner that he/she is obliged by the oath to the Nation and whether this person would again breach the oath to the Nation, that is, whether the oath repeatedly taken by this person to the Nation would be fictitious.

… impeachment is one of the forms of public and democratic control over state officials, one of the measures of the self-protection of the national community – the civil Nation, a way of its self-defence against the aforementioned high officials of state power who disregard the Constitution and law, where the said officials are no longer permitted to hold certain office, as they do not fulfil their obligation to unconditionally follow the Constitution, law, as well as the interests of the Nation and the State of Lithuania. It has … been mentioned that the President of the Republic whose actions are declared by the Constitutional Court as ones that grossly violated the Constitution and who was dismissed as the President of the Republic by the Seimas, the representation of the Nation, following impeachment proceedings, will always remain a person who

breached the oath taken to the Nation, who grossly violated the Constitution, and who was dismissed as the President of the Republic for this reason.

Removing from office trough impeachment proceedings the President of the Republic or any other person indicated in Article 74 of the Constitution who breaches the oath and grossly violates the Constitution is not an objective in itself. The purpose of the constitutional institution of impeachment is not exclusively a one-off removal of such persons from office; it has a much broader purpose – to prevent persons who grossly violate the Constitution and breach the oath from holding such a constitutionally provided office that is linked with taking an oath specified in the Constitution. The content of the constitutional sanction (constitutional responsibility) applied upon the procedure for impeachment proceedings is composed both of the removal of a person who grossly violates the Constitution and breaches the oath from office, and also of the prohibition stemming therefrom preventing such a person from holding any office provided for in the Constitution that can be entered only after taking the oath provided for in the Constitution. The said prohibition on holding such office established in the Constitution where entering the said office requires taking an oath provided for in the Constitution is a constituent part of the constitutional sanction – removal from office, but not a repeated punishment of a person who grossly violated the Constitution and breached the oath, and not a second "punishment" imposed on the person for the same violation of the Constitution; such a prohibition also reflects the very essence, mission, and purpose of both constitutional responsibility and impeachment as a measure of the self-protection of the national community – the civil Nation; the said essence, mission, and purpose of impeachment and constitutional responsibility are to ensure that a person who grossly violated the Constitution and breached the oath, and was removed from office by the Seimas for the said reason, could never hold office that requires taking an oath specified in the Constitution.

The Constitution consolidates such a legal regulation whereby a person who was removed from the office of the President of the Republic by the Seimas following impeachment proceedings for a breach of the oath and a gross violation of the Constitution may never stand for election as the President of the Republic. A different interpretation of the provisions of the Constitution would make legally meaningless and pointless the constitutional institution of impeachment for a gross violation of the Constitution and a breach of the oath; in addition, a different interpretation of the provisions of the Constitution would be incompatible with the essence and purpose of constitutional responsibility for a breach of the oath and a gross violation of the Constitution, with the essence and purpose of the oath established in the Constitution as a constitutional value, as well as with the requirement, which arises from the overall constitutional legal regulation, that all institutions executing state power and other state institutions be formed only from such citizens who without reservations obey the Constitution adopted by the Nation and who, while in office, unconditionally follow the Constitution, law, as well as the interests of the Nation and the State of Lithuania. A different interpretation of the provisions of the Constitution would be inconsistent with both the constitutional principle of a state under the rule of law and the constitutional imperative of an open, just, and harmonious civil society.

[…]

… The Constitution consolidates such a legal regulation where, under the Constitution, a person whose mandate of a member of the Seimas was revoked through impeachment proceedings for a gross violation of the Constitution and a breach of the oath, or where a person was removed from the office of the President of the Republic, the President and a justice of the Constitutional Court, the President and a justice of the Supreme Court, the President and a judge of the Court of Appeal for a gross violation of the Constitution and a breach of the oath may never stand for election as the President of the Republic, a member of the Seimas, may never hold the office of a justice of the Constitutional Court, a justice of the Supreme Court, a judge of the Court of Appeal, a judge at another court, a member of the Government, or the Auditor General, i.e. may not hold such office established in the Constitution where, according to the Constitution, entering the said office requires taking an oath provided for in the Constitution. A different interpretation of the provisions of the Constitution would make legally meaningless and pointless the constitutional institution of impeachment for a gross violation of the Constitution and a breach of the oath; in addition, a different

interpretation of the provisions of the Constitution would be incompatible with the essence and purpose of constitutional responsibility for a breach of the oath and a gross violation of the Constitution, with the essence and purpose of the oath established in the Constitution as a constitutional value, as well as with the requirement, which arises from the overall constitutional legal regulation, that all institutions executing state power and other state institutions be formed only from such citizens who without reservations obey the Constitution adopted by the Nation and who, while in office, unconditionally follow the Constitution, law, as well as the interests of the Nation and the State of Lithuania. A different interpretation of the provisions of the Constitution would be inconsistent with both the constitutional principle of a state under the rule of law and the constitutional imperative of an open, just, and harmonious civil society.

A crime as the grounds for impeachment (Paragraph 2 of Article 56 and Article 74 of the Constitution)

The Constitutional Court's ruling of 25 May 2004

One of the grounds laid down in Article 74 of the Constitution under which a certain official specified in Article 74 of the Constitution may be removed from office or his/her mandate of a member of the Seimas may be revoked is "found to have committed a crime". When disclosing what constitutional consequences arise in respect to a person due to the fact that he/she was removed from office, or his/her mandate of a Seimas member was revoked following impeachment proceedings for the commission of a crime, account must also be taken of the provision, which is laid down in Paragraph 2 of Article 56 of the Constitution, whereby persons who have not served punishment imposed by a court judgment may not stand for election as a member of the Seimas. This constitutional provision also means that, if a person sentenced by a court for having committed a crime has served punishment imposed by a court judgment, he/she may stand for election as a member of the Seimas.

In this context, it should be mentioned that crimes provided for in the criminal law may be not only grave, but also minor ones, they may be committed not only intentionally, but also due to negligence, they may be more dangerous or less dangerous, they may cause especially severe consequences or consequences not that severe, they may be committed due to selfish or unselfish intentions, they may be related or not related to the duties performed (office held), etc. As such, the commission of a crime does not mean that a person has, at the same time, violated the Constitution, or breached the oath, or that, in his/her activity, the said person has not observed the Constitution, or failed to act in the interests of the Nation and the State of Lithuania, etc. Some crimes may also be of such a nature that they do not interrelate directly with a breach of the oath provided for in the Constitution or a gross violation of the Constitution. Therefore, the Constitution itself (Paragraph 2 of Article 56) establishes *expressis verbis* an exception in respect to the consequences that arise due to the fact that a person was removed from office or his/her mandate of a member of the Seimas was revoked following impeachment proceedings for the commission of a crime. It follows from the provisions of Article 74 and Paragraph 2 of Article 56 of the Constitution that a crime by which the Constitution is not grossly violated and the oath is not breached does not cause the same constitutional legal effects as a crime by which the Constitution is grossly violated or the oath is breached. Paragraph 2 of Article 56 of the Constitution, according to which a person who has served punishment imposed by a court judgment may stand for election as a member of the Seimas, by providing for an exception in respect to the consequences that arise upon the application of the sanctions set forth in Article 74 of the Constitution for a gross violation of the Constitution and a breach of the oath, means that the Constitution does not provide that a person who was removed from the office of the President of the Republic following impeachment proceedings for the commission of such a crime by which the Constitution was not grossly violated or the oath was not breached may not stand for election as a member of the Seimas; on the contrary, by making the said exception, the Constitution *expressis verbis* permits such a person to stand for election as a member of the Seimas.

… in a democratic state under the rule of law, a person who grossly violates the Constitution or breaches the oath must not escape constitutional responsibility – removal from office. Therefore, under the Constitution, the Seimas, which decides whether to remove, in accordance with impeachment proceedings, a person from office or to revoke his/her mandate of a member of the Seimas for the commission of a crime, bears the responsibility to ascertain whether the Constitution was grossly violated and the oath was breached as a result of committing such a crime.

In view of the fact that one of the conditions established in Paragraph 1 of Article 78 of the Constitution when a person may stand for election as the President of the Republic is that the fact that he/she "may stand for election as the President of the Republic", it should be held that the Constitution provides that a person who was removed by the Seimas from office or whose mandate of a member of the Seimas was revoked following impeachment proceedings for the commission of a crime by which the Constitution was not grossly violated or the oath was not breached may stand for election as the President of the Republic (i.e. the Constitution gives permission for standing for such election).

The oath taken by state officials

The Constitutional Court's ruling of 25 May 2004

Under the Constitution, not only the President of the Republic who is the Head of State, but also the members of the Seimas, the members of the Government, the justices of the Constitutional Court, judges of other courts, and the Auditor General, must take an oath.

Paragraph 2 of Article 59 of the Constitution prescribes that an elected member of the Seimas acquires all rights of a representative of the Nation only after taking at the Seimas an oath to be faithful to the Republic of Lithuania; the text of the oath of a member of the Seimas is established in Article 5 of the Republic of Lithuania's Law on the Procedure for the Entry into Force of the Constitution of the Republic of Lithuania, which is a constituent part of the Constitution. Paragraph 3 of Article 59 of the Constitution stipulates that a member of the Seimas who either does not take the oath according to the procedure established by means of a law or takes a conditional oath loses the mandate of a member of the Seimas, and the Seimas adopts the respective resolution thereon. Article 93 of the Constitution provides that, before taking office, the Prime Minister and ministers take an oath at the Seimas to be faithful to the Republic of Lithuania and to observe the Constitution and laws; the same article stipulates that the text of the oath is established by the Law on the Government. Paragraph 2 of Article 104 of the Constitution states that, before entering office, the justices of the Constitutional Court take an oath at the Seimas to be faithful to the Republic of Lithuania and the Constitution. Paragraph 6 of Article 112 of the Constitution provides that a person appointed as a judge must, according to the procedure established by means of a law, take an oath to be faithful to the Republic of Lithuania and to administer justice only according to the law. Paragraph 3 of Article 133 of the Constitution provides that, before taking office, the Auditor General takes an oath and that the oath is established by means of a law.

Thus, according to the Constitution, the members of the Seimas, the members of the Government, the justices of the Constitutional Court, judges of other courts, and the Auditor General must take an oath before entering office. The aforementioned persons may not begin to hold office before they take an oath.

In view of the fact that, under the Constitution, the legal status of the said state officials differs, the texts of their oaths established in the Constitution are also not the same; however, the texts of the oaths of all indicated state officials reflect the same constitutional values from various aspects; on the other hand, the texts of the oaths stress namely the values that are linked by the Nation with the respective office and with the activity of persons holding the respective office.

It needs to be noted that, under the Constitution, the members of the Seimas, the members of the Government, and judges must swear to be faithful to the Republic of Lithuania (although, as mentioned before, due to the different legal status of the state officials indicated in the Constitution, the texts of the oaths are not the same). It also needs to be noted that the text of the oath of the Auditor General is not established in the Constitution (under Paragraph 3 of Article 133 of the Constitution, the oath of the Auditor

General is established by law); however, the constitutional status of the Auditor General implies the requirement for the Auditor General to take an oath to be faithful to the Republic of Lithuania …

Faithfulness to the State of Lithuania is inseparable from faithfulness to the Constitution; upon a breach of the oath to be faithful to the Republic of Lithuania, the Constitution is also grossly violated.

It needs to be mentioned that the oath of the members of the Seimas, the members of the Government, the justices of the Constitutional Court, judges of other courts, the Auditor General, as well as the oath of the President of the Republic, is not a mere formal or symbolic act. In view of the fact that the institution of the oath of the aforementioned state officials and the content of their oath are established in the Constitution, the oath taken by the said persons bears the constitutional meaning and gives rise to constitutional legal effects: a person may not begin to hold office before he/she takes an oath; under the Constitution, the refusal to take the oath, taking the oath with certain reservations, or changing the text of the oath, or the refusal to sign the text of the oath mean that a particular person may not take office: if a person elected as a member of the Seimas does not take the oath, the Seimas must adopt a resolution on the loss of the mandate of a member of the Seimas (Paragraph 3 of Article 59 of the Constitution); if a person appointed a justice of the Constitutional Court, a justice of the Supreme Court, a judge of the Court of Appeal, or a judge of another court does not take the oath, another person must be appointed to the said office; if a person appointed a member of the Government does not take the oath, another person must be appointed to the said office; if a person appointed the Auditor General does not take the oath, another person must be appointed the Auditor General.

The act of the oath of the aforesaid state officials is constitutionally legally significant also for the reason that, when taking the oath, the aforementioned persons publicly and solemnly accept the obligation to act in accordance with the obligations of the oath; their constitutional obligation to act only in accordance with the obligations of the oath and to breach the oath under no circumstances emerges from the moment of taking the oath. Under Article 74 of the Constitution, a breach of the oath is one of the grounds under which not only the President of the Republic, but also the President and justices of the Constitutional Court, the President and justices of the Supreme Court, as well as the President and judges of the Court of Appeal, may be removed from office, or the mandate of a member of the Seimas may be revoked following impeachment proceedings.

The responsibility of state officials to society; the principle of responsible governance

The Constitutional Court's ruling of 1 July 2004

The Constitution is supreme law, which imposes limitations on state power. The Constitution consolidates the principle of responsible governance.

The fact that, under the Constitution, the Nation executes its supreme sovereign power either directly or through its democratically elected representatives, that the scope of powers is limited by the Constitution, and that state institutions serve the people, implies that state officials, who perform their functions when implementing state power, and all persons who make decisions important to society and the state, must follow the Constitution and law and must act in the interests of the Nation and the State of Lithuania. The civil Nation, which entrusts such persons with the management of general matters and with representation of the Nation and the state who make decisions important to society and the state by virtue of the office they hold or the mandate they have acquired, must be protected from the arbitrariness of state officials, from their actions based on their personal or group interests instead of the interests of the Nation and the State of Lithuania, from using their status for the benefit of their own, their close relatives, or other persons. In its ruling of 25 May 2004, the Constitutional Court held the following: "In order that the citizens – the national community – could reasonably trust state officials so that it would be possible to ascertain that all state institutions and all state officials follow the Constitution and law and obey them, and that those who do not obey the Constitution and law would not hold the office for which the confidence of the citizens – the national community – is needed, it is necessary to ensure public democratic control over the activity of state

officials and their accountability to society comprising, *inter alia*, the possibility of removing from office those state officials who violate the Constitution and law, who bring their personal interests or the interests of a certain group above the public interests, or who bring discredit on state authority by their actions."

According to the Constitution, the legislature has the duty to establish by means of legal acts such a legal regulation that would ensure that state officials, who perform their functions in implementing state power, and all persons who make decisions important to society and the state, are able to properly exercise their powers, that clashes between public and private interests are avoided, that no legal conditions are created for state officials, who perform their functions in implementing state power, and for all persons who make decisions important to society and the state, for acting in the private interests or interests of a certain group instead of the interests of the Nation and the State of Lithuania, and for using their status for the benefit of their own, their close relatives, or other persons in order to make it possible to effectively control how state officials, who perform their functions in implementing state power, and all persons who make decisions important to society and the state follow the said requirements, and in order to hold liable under to the Constitution and law the aforementioned state officials or other persons if they do not follow these requirements.

The requirements of fair legal proceedings applicable in impeachment proceedings

The Constitutional Court's conclusion of 3 June 2014

In its ruling of 11 May 1999, the Constitutional Court held that the constitutional concept of impeachment implies fair legal proceedings, in which the priority is given to the protection of the rights of a person; the protection of the rights of a person is guaranteed 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 the said person has the right and possibility of defending those rights.

It should be noted that the requirement for fair legal proceedings gives rise to the duty of the legislature to establish a legal regulation that would create the preconditions for a member of the Seimas or a state official against whom impeachment is or has been instituted to defend his/her rights at all stages of impeachment proceedings. It should also be noted that the requirement for fair legal proceedings implies the duty of the state institutions that have the constitutional powers in impeachment proceedings, i.e. the Seimas and the Constitutional Court, when they implement their respective functions in impeachment proceedings, to enable a person against whom impeachment is or has been instituted to implement his/her rights in impeachment proceedings.

The obligation of persons against whom impeachment is applied to participate in the impeachment proceedings

The Constitutional Court's conclusion of 3 June 2014

… a member of the Seimas or a state official against whom impeachment is to be or has been instituted has the right, as well as the obligation stemming from their oath, to participate in the impeachment proceedings. A member of the Seimas or a state official, who has taken the oath to be faithful to the Republic of Lithuania and to respect and execute its Constitution and laws, must respect state power institutions. Thus, a member of the Seimas or a state official against whom impeachment is to be or has been instituted has the obligation to arrive, when requested, at the state institutions that have the constitutional powers in impeachment proceedings and to provide explanations for the actions that are a subject matter of the investigation and assessment carried out by these institutions. Failure to fulfil this obligation when a person is duly informed about the ongoing impeachment proceedings does not prevent the state institutions that have the constitutional powers in impeachment proceedings, *inter alia*, the Constitutional Court, to exercise their powers and adopt decisions that fall within their competence.

The powers of the Seimas and the Constitutional Court in impeachment proceedings initiated after a certain person is found to have committed a crime

The Constitutional Court's decision of 10 May 2016

… under the Constitution, the Seimas decides whether to remove, in accordance with impeachment proceedings, a person from office or to revoke his/her mandate of a member of the Seimas for the commission of a crime. By filing with the Constitutional Court an inquiry on the constitutionality of the concrete actions of a person against whom an impeachment case has been instituted, the Seimas implements its responsibility to ascertain whether the Constitution was grossly violated and the oath was breached as a result of committing such a crime.

… it should also be noted that the application of the impeachment ground "found to have committed a crime" does not imply that the Seimas has the powers to apply to the Constitutional Court with an inquiry whether the concrete actions of a member of the Seimas against whom an impeachment case has been instituted are in conflict with the Constitution in cases where such actions could not violate the Constitution in a gross manner or breach the oath of the member of the Seimas since these actions had been performed before the said oath was taken. Where the impeachment ground "found to have committed a crime" is applied, the Constitutional Court does not have the powers to assess the constitutionality of any such actions by which the Constitution could not be violated and the oath could not be breached by a member of the Seimas because the said actions had been performed before the member of the Seimas took his/her oath; otherwise, the constitutional concept of impeachment would be disregarded.

Impeachment on the grounds of being found to have committed a crime (Article 74 of the Constitution)

The Constitutional Court's ruling of 24 February 2017

… the constitutional purpose of impeachment as one of the instruments of the self-protection of civil society is public democratic control over the activity of the highest state officials, which creates the preconditions for imposing constitutional responsibility on them: removing from office those officials or revoking the mandate of those members of the Seimas who bring discredit on state authority by their actions and, due to this, lose the confidence of the citizens.

[…]

… under Article 74 of the Constitution, impeachment can be applied for various crimes found to have been committed. However, this in itself does not mean that, when found to have committed a crime, persons should be removed from office (or have their mandates of a member of the Seimas revoked) in all cases for having committed any type of a crime: a decision on the application of impeachment on the indicated grounds and the ensuing removal of the person from office (revocation of his/her mandate of a member of the Seimas) on the indicated grounds may be taken exclusively by the institution vested with the respective powers in the impeachment process, i.e. by the Seimas (*inter alia*, in the cases provided for in the Constitution and upon receiving the relevant conclusion of the Constitutional Court) through impeachment proceedings by a 3/5 majority vote of all the members of the Seimas.

… the impeachment grounds of being "found to have committed a crime", as specified in Article 74 of the Constitution, are not linked to the time when a crime was committed; specifically, it is only the fact of having committed a crime that must be found while a person indicated in Article 74 of the Constitution is in office.

The special status, *inter alia*, the powers, of officials (highest state officials) whose constitutional responsibility is decided in impeachment proceedings implies that the preconditions for discrediting state authority can be created not only in cases where the persons specified in Article 74 of the Constitution are, in the course of holding their respective office, found to have committed a crime while in office, but also where state authority is exercised while implementing certain functions by the persons specified in Article 74 of the Constitution who had committed a crime before taking up office and these circumstances transpire while they are already in office. A different interpretation of the provisions of Article 74 of the Constitution

would be incompatible with the constitutional purpose of impeachment, since it would create the preconditions for holding office by those highest state officials who, once it is found that they had committed a crime before taking up office, would bring discredit on state authority and, due to this, would lose the confidence of the citizens.

Thus, as mentioned before, the constitutional purpose of impeachment, is public democratic control over the activity of the highest state officials, which creates the preconditions for imposing constitutional responsibility on them: removing from office those officials or revoking the mandate of those members of the Seimas who bring discredit on state authority by their actions and, due to this, lose the confidence of the citizens; in view of this, under Article 74 of the Constitution, impeachment may be applied for both a crime committed by a person before taking up a position specified in this article and a crime committed while holding such a position.

It should be noted that the circumstance that the actions creating the preconditions for applying impeachment on the above-mentioned grounds had been committed by a person specified in Article 74 of the Constitution before taking up office implies the specific features of the impeachment process itself.

[…]

… under the Constitution, it is exclusively the Seimas that, while implementing its constitutional powers to conduct impeachment, is allowed to adopt a decision to institute impeachment proceedings against a particular person. Therefore, impeachment proceedings against a particular person for having committed a crime are instituted only upon the decision of the Seimas after the members of the Seimas formally bring charges against this person or after the effective judgment of conviction is received from a court. At the same time, giving its consent to hold a person criminally responsible, the Seimas decides only to the extent that the circumstances important for applying impeachment for a crime having been committed will be established by judicial institutions; taking such a decision does not in itself constitute the institution of impeachment proceedings.

… the special constitutional status of the President of the Republic, *inter alia*, the special immunity granted to him/her, which is evident in the fact that, among other things, the President of the Republic may not be held criminally responsible while in office, determines that the circumstances important for the application of impeachment with regard to the President of the Republic for having committed a crime may be established exclusively by the Seimas.

[…]

Thus, the Seimas itself may establish the circumstances important for impeachment imposed for a crime having been committed only in cases where the fact of a crime having been committed (and the official having committed it) is obvious, as well as in cases where impeachment is conducted against the President of the Republic. In all other cases, after the Seimas gives its consent to hold a particular person indicated in Article 74 of the Constitution criminally responsible, impeachment for having committed a crime may be conducted only after the authorised judicial authorities establish the circumstances important for the application of impeachment on the constitutional grounds of being “found to have committed a crime”, i.e. after the fact of a crime having been committed and the official having committed it are established by the effective court judgment of conviction.

It should be noted in this context that the fact of a crime having been committed (and the official having committed it) can be considered obvious only where there is reliable information (submitted by the authorised institution to the Seimas) that a particular person indicated in Article 74 of the Constitution has been found in the act of committing a crime, and, in order to be able to state the circumstances important for applying impeachment on the constitutional grounds of being “found to have committed a crime”, i.e. to state the fact of a crime having been committed and the official having committed it, the participation of judicial authorities carrying out pretrial investigation and considering criminal cases is not required. In other cases, *inter alia*, where a crime is committed by a person indicated in Article 74 of the Constitution before taking up office, the fact of having committed a crime cannot be considered obvious; therefore, in these cases (except where impeachment is applied with regard to the President of the Republic), the circumstances

important for the application of impeachment, i.e. the fact of a crime having been committed (and the official having committed it), must be established by the authorised judicial authorities after the Seimas gives its consent to hold a particular person indicated in Article 74 of the Constitution criminally responsible.

It should be noted that, even in the above-mentioned exceptional case where the fact of a crime having been committed is obvious and can be stated by the Seimas itself, the Seimas may also decide, according to the procedure provided for in the Statute of the Seimas, whether to give its consent to hold a particular person indicated in Article 74 of the Constitution (except the President of the Republic) criminally responsible. After the Seimas gives its consent to hold a particular person indicated in Article 74 of the Constitution criminally responsible, the impeachment proceedings may be continued in the Seimas against the person for having committed a crime, the fact of having committed which is obvious, while the judicial authorities may at the same time decide the question concerning the criminal responsibility of that person. A different interpretation of the provisions of the Constitution (that, purportedly, after deciding to conduct impeachment for a crime the fact of having committed which is obvious, the Seimas would not be allowed to give its consent to hold the person having committed this crime criminally responsible) would make it complicated to hold the said person criminally responsible or would even create the preconditions for the person against whom impeachment is applied for a crime the fact of having committed which is obvious to escape criminal responsibility.

[…]

… impeachment on the constitutional grounds of being "found to have committed a crime" in those cases where the Seimas gives its consent to hold a particular person criminally responsible (except where the fact of a crime having been committed (as well as the official having committed it) is obvious) is permissible after the circumstances important for the application of impeachment have been established by the effective court judgment of conviction indisputably, i.e. conclusively (in view of the competence of courts belonging to the … instance system of courts).

The requirements of fair legal process applicable to impeachment proceedings (*inter alia*, the requirement of the publicity of impeachment proceedings and the requirement of creating the conditions for a person to defend his/her rights at all stages of impeachment proceedings) are not absolute

The Constitutional Court's conclusion of 19 December 2017

… under the Constitution, the requirements of fair legal process that apply to impeachment are not absolute. The Constitutional Court has noted that the values consolidated in the Constitution constitute a harmonious system and there is a balance among these values; in the event of a clash between the values protected by the Constitution, it is necessary to find decisions ensuring that none of these values will be denied or unreasonably limited; otherwise, the balance among the values protected by the Constitution, the constitutional imperative of a harmonious and civil society, as well as the constitutional principle of a state under the rule of law, would be denied (*inter alia*, the rulings of 23 October 2002 and 4 March 2003).

Against this background, it should be noted that the requirement of the publicity of impeachment proceedings, which is meant to ensure the rights of a person being impeached, must also be interpreted in the context of other constitutional values.

Paragraph 1 of Article 117 of the Constitution prescribes: "In all courts, the consideration of cases shall be public. A closed court hearing may be held in order to protect the secrecy of private or family life, or where the public consideration of the case might disclose a state, professional, or commercial secret."

The Constitutional Court has held that the provision "in all courts" of Paragraph 1 of Article 117 of the Constitution embraces the courts of all systems, the courts of all levels, and the courts of all instances (ruling of 6 December 2012). The Constitutional Court is part of the judiciary system (rulings of 6 June 2006 and 13 May 2010). Thus, Paragraph 1 of Article 117 of the Constitution also applies to court proceedings before the Constitutional Court, *inter alia*, in the course of considering a case on determining whether the actions of a person being impeached are in conflict with the Constitution.

In its ruling of 6 December 2012, the Constitutional Court, when interpreting Paragraph 1 of Article 117 of the Constitution, noted that the principle of the public consideration of cases in a court is not absolute; Paragraph 1 of Article 117 of the Constitution, in which the said principle is consolidated, provides both for certain exceptions to the publicity of the consideration of cases and for situations where a closed court hearing may be held; the publicity is limited for the purposes of protecting the private or public interest; the principle of the public consideration of cases in a court may also be limited by means of a law, with a view to protecting other constitutional values; in order to protect human dignity, the inviolability of private life (Article 22 of the Constitution), and other values whose protection stems from the Constitution, it is permitted to limit, by means of a law, the publicity of separate elements of the process of the consideration of cases.

It should be mentioned that, under Paragraph 4 of Article 22 of the Constitution, courts must also protect everyone from arbitrary or unlawful interference with his/her private and family life, as well as from encroachment upon his/her honour and dignity.

Thus, in the light of Paragraph 1 of Article 117 of the Constitution … it should be noted that, for the protection of the private or public interest, *inter alia*, in order to protect constitutional values such as human dignity and the inviolability of private life, certain elements of proceedings before the Constitutional Court in the course of considering a case on the constitutionality of the actions of a person being impeached (*inter alia*, a hearing of the Constitutional Court in which evidence is examined, witnesses are questioned, and pleadings take place) may be not open to the public by a decision of the Constitutional Court.

This is also *mutatis mutandis* applicable when impeachment proceedings are instituted and carried out at the Seimas.

… it should also be noted that the requirement to create the conditions for a member of the Seimas or a public official against whom impeachment is being or has been instituted to defend his/her rights at all stages of the impeachment proceedings should also be interpreted in the context of other provisions of the official constitutional doctrine.

… under the Constitution, impeachment proceedings begin only after the Seimas adopts a resolution on instituting impeachment proceedings in the Seimas against a concrete person. Thus, the actions preceding the beginning of impeachment, i.e. before the Seimas adopts such a resolution (where such actions include, *inter alia*, the initiative of the members of the Seimas to institute impeachment and the investigation of the reasonableness of the charges brought by them in a commission set up by the Seimas or in another structural unit of the Seimas), do not constitute a stage of impeachment proceedings; therefore … a person against whom impeachment may be instituted need not be given the same conditions for defending his/her rights as a person against whom impeachment has been instituted and is under way. It should be noted that the creation of different conditions for defending his/her rights for a person against whom impeachment may be instituted can also be based, *inter alia*, on the above-mentioned purpose of protecting the private or public interest, among other things, on the objective to protect constitutional values such as human dignity and the inviolability of private life.

It is also necessary to take into account the fact that the Seimas by its nature and essence is an institution of a political character, whose decisions reflect the political will of the majority of the members of the Seimas and are based on political agreements and various political compromises (conclusion of 31 March 2004 and the ruling of 27 May 2014). Therefore, the actions preceding the beginning of impeachment, i.e. before the Seimas adopts a resolution on instituting impeachment proceedings in the Seimas against a concrete person (*inter alia*, the initiative of members of the Seimas to institute impeachment and the investigation of the reasonableness of the charges brought by them in a commission set up by the Seimas or in another structural unit of the Seimas), which, as mentioned before, do not constitute a stage of impeachment proceedings, is a parliamentary procedure that must not be regarded as a legal process *stricto sensu*, since, in the course of this parliamentary procedure, the Seimas does not decide on the application of constitutional responsibility of a person, but only whether there is a basis for instituting impeachment. This parliamentary procedure must be regulated in such a way that would ensure the due process of law, which means, *inter alia*, that a person

against whom impeachment may be instituted must have a real possibility of knowing what he/she is being accused of, submitting his/her explanations to the Seimas or to a commission set up by the Seimas or to another structural unit of the Seimas that is investigating the reasonableness of the charges brought against the said person, or, at the sitting of the Seimas in which it is decided on whether to begin impeachment, responding to the arguments on which the charges against this person are based.

[…]

… under the Constitution, impeachment proceedings as a whole should be considered fair and appropriate if, in compliance with the requirements of fair legal proceedings, a member of the Seimas the issue of whose constitutional responsibility is being decided and/or his/her representatives is/are provided with the conditions for defending their interests both at the hearing of the Constitutional Court and at the Seimas where, in accordance with the procedure established in the Statute of the Seimas, impeachment proceedings are continued following the entry into force of the conclusion of the Constitutional Court that the concrete actions of the person against whom the impeachment case has been instituted are in conflict with the Constitution.

The grounds for impeachment; constitutional responsibility on the grounds of a breach of the oath may not be applied for acts committed before taking the oath, *inter alia*, acts committed during the previous term of office (Article 74 of the Constitution)

The Constitutional Court's conclusion of 22 December 2017

The persons specified in Article 74 of the Constitution may be removed from office (or their mandate of a member of the Seimas may be revoked) through impeachment proceedings for the actions provided for in the Constitution: a gross violation of the Constitution, a breach of the oath, or for having committed a crime (rulings of 15 April 2004 and 24 February 2007).

It should be noted that these grounds for impeachment are not identical and may not be interpreted in the same manner.

As noted by the Constitutional Court in its ruling of 24 February 2017, the impeachment grounds of being "found to have committed a crime", as specified in Article 74 of the Constitution, are not linked to the time when a crime is committed; it is only the fact of having committed a crime that must be found while a person indicated in Article 74 of the Constitution is in office; the preconditions for bringing discredit on state power can be created not only in cases where it transpires that the persons specified in Article 74 of the Constitution have committed a crime while holding their respective office, but also where state power is exercised while implementing certain functions by persons specified in Article 74 of the Constitution who committed a crime before taking up their respective office and these circumstances transpire already when they are in this office.

It should be mentioned that, where the impeachment grounds of being "found to have committed a crime" are applied, the Constitutional Court does not have the powers to assess the constitutionality of such respective actions where they cannot be deemed a gross violation of the Constitution and a breach of the oath precisely due to the fact that the said actions had been performed before the oath of a member of the Seimas was taken; otherwise, the constitutional concept of impeachment would be disregarded (ruling of 24 February 2017).

The other grounds indicated in Article 74 of the Constitution for impeachment – a gross violation of the Constitution and a breach of the oath, from the aspect of the time of committing the actions constituting these grounds, should be assessed differently compared to the grounds of being "found to have committed a crime".

The wording of Article 74 of the Constitution, under which the Seimas may remove the persons specified in this article from office through impeachment proceedings if they "grossly violate the Constitution or breach their oath", makes it clear that importance falls not only on the time when the actions grossly violating the Constitution or breaching the oath transpire; the time of committing these actions is

also important, i.e. it is important that such actions are committed by the person not at any time, but while holding the office referred to in Article 74 of the Constitution, which may be entered only after taking an oath provided for in the Constitution, and while being bound by the oath.

It should be noted that impeachment proceedings are not an objective in itself. … the objective of impeachment proceedings is to decide the question of the constitutional responsibility of the persons specified in Article 74 of the Constitution. The content of the constitutional sanction (constitutional responsibility) applied through impeachment proceedings for a gross violation of the Constitution and a breach of the oath comprises both the removal from office of the person who has grossly violated the Constitution and breached the oath and the prohibition stemming therefrom that prevents such a person in the future from holding any constitutionally established office that can be entered only after taking an oath provided for in the Constitution (rulings of 25 May 2004 and 5 September 2012 and the conclusion of 19 December 2017).

Thus, removal from office as a constitutional sanction applied through impeachment proceedings must be related to a gross violation of the Constitution and a breach of the binding oath committed while holding this office (rather than other office or office held previously), i.e. the purpose of this sanction is to remove a person indicated in Article 74 of the Constitution specifically from the office being held by that person – such office that he/she entered after taking the respective oath and was holding at the time when he/she breached his/her binding oath. Obviously, it is impossible to remove a person from office that he/she is no longer holding after his/her powers have expired (ceased); therefore, the constitutional responsibility of a person indicated in Article 74 of the Constitution for a gross violation of the Constitution or a breach of the oath committed at the time when he/she was holding the said office is also impossible. In addition, if the Constitution were interpreted in a way that a person referred to in Article 74 of the Constitution, purportedly, could be removed from office through impeachment proceedings for such a gross violation of the Constitution or a breach of the oath that was committed at the time when he/she was earlier holding the office provided for in Article 74 of the Constitution, constitutional responsibility could be a manifestly disproportionate measure against those persons specified in Article 74 of the Constitution who would themselves confess to having committed a gross violation of the Constitution or a breach of the oath and would resign from the earlier office referred to in Article 74 of the Constitution even before impeachment begins (or before it ends); even such persons, should they take up again the positions referred to in Article 74 of the Constitution, would always be faced with the risk that they will be impeached, and constitutional responsibility will be applied to them for the gross violation of the Constitution and the breach of the oath to which they confessed and which were committed by them while being in the office from which they resigned.

As mentioned before in the context of the interpretation of the provisions of Paragraphs 1 and 2 of Article 59 and the provisions of Article 63 of the Constitution, the taken oath binds a member of the Seimas as a representative of the Nation during all the duration of his/her term of powers, i.e. from the moment when he/she, having taken an oath to the Republic of Lithuania under the Constitution, acquires all the rights of a representative of the Nation until the moment when his/her powers as a member of the Seimas cease on any of the grounds set out in Article 63 of the Constitution, *inter alia*, when the newly elected Seimas convenes for the first sitting after the expiry of the term of powers (incumbency) of the member of the Seimas (Item 1 of Article 63 of the Constitution); according to the Constitution, after the cessation of the powers of a member of the Seimas, the oath of a member of the Seimas taken by him/her is no longer binding.

Thus, under the Constitution, *inter alia*, Article 74 thereof, it is impossible to apply constitutional responsibility to a member of the Seimas through impeachment proceedings for his/her actions that may have grossly violated the Constitution and breached his/her oath if these actions were committed during a previous term of office of the member of the Seimas (during the exercise of powers held previously). Accordingly, under the Constitution, the Constitutional Court has no powers to assess, in terms of compliance with the Constitution, such actions of a member of the Seimas that were performed during his/her

previous term of office as a member of the Seimas (during the exercise of powers held previously), i.e. at the time before the member of the Seimas took his/her binding oath of a member of the Seimas.

In this context, it should be noted that, under the Constitution, it would be possible to apply impeachment to a member of the Seimas for his/her actions that were committed during his/her previous term of office as a member of the Seimas and may have grossly violated the Constitution and breached his/her oath binding at that time if such actions were also criminal, i.e. upon the impeachment grounds of being "found to have committed a crime". In any case, the actions of a member of the Seimas that were committed during his/her previous term of office as a member of the Seimas and may have grossly violated the Constitution and breached his/her oath binding at that time could provide the grounds, according to Article 75 of the Constitution, for expressing no confidence in such a member of the Seimas and removing him/her from the office at the Seimas for which he/she was appointed or elected by the Seimas, or such actions of a member of the Seimas could also be an object for an investigation by an ad hoc investigation commission of the Seimas if they were of particular importance, i.e. of state importance (in view of the fact that, as noted by the Constitutional Court on more than one occasion, ad hoc investigation commissions of the Seimas must be formed for an investigation into not any, but only special questions, i.e. those of state importance).

Parliamentary procedure before instituting impeachment proceedings

The Constitutional Court's conclusion of 22 December 2017

… a member of the Seimas or state official against whom impeachment may be instituted is also obliged to participate in the parliamentary procedure before instituting impeachment (*inter alia*, in the course of investigating, in a commission set up by the Seimas or in another structural unit of the Seimas, the reasonableness of charges brought by members of the Seimas) and, when summoned, to attend the meetings of the commission set up by the Seimas or another structural unit of the Seimas that is carrying out this procedure and to provide explanations regarding the actions under investigation. Under the Constitution, the requirement for the due legal process in this parliamentary procedure implies such a process during which a member of the Seimas or state official against whom impeachment may be instituted could effectively exercise the above-mentioned rights, *inter alia*, be aware of what he/she is being accused of, provide his/her explanations, and respond to the arguments on which the charges against him/her are based. Therefore, this parliamentary procedure must, *inter alia*, be such that the commission set up by the Seimas or another structural unit of the Seimas would investigate the reasonableness of charges brought by members of the Seimas (or the structural unit of the Seimas) initiating impeachment, rather than would formulate charges that are, in principle, new and have not been brought by the entities initiating impeachment, in particular on the grounds of the explanations submitted to the said commission of the Seimas or another structural unit of the Seimas by the member of the Seimas or state official against whom impeachment may be instituted; otherwise, the preconditions would be created for deterring the member of the Seimas or state official against whom impeachment may be instituted from exercising the above-mentioned rights of the due legal process.

The prohibition for a person removed from office through impeachment procedure to stand for election as the President of the Republic

The Constitutional Court's decision of 28 May 2019

… in its decision of 20 March 2014, the Constitutional Court held that the prohibition, stemming from the Constitution, for a person to stand for election as the President of the Republic if the person has grossly violated the Constitution and breached an oath and, due to this, through impeachment procedure has been removed from the office of the President of the Republic, the President and a justice of the Constitutional Court, the President and a justice of the Supreme Court, or the President and a judge of the Court of Appeal, or his/her mandate of a member of the Seimas has been revoked, could be abandoned only after the

Constitution is amended accordingly. This is also reiterated in the Constitutional Court's ruling of 22 December 2016 …

Thus, under the Constitution, the prohibition to stand for election as the President of the Republic for a person who has grossly violated the Constitution and breached an oath and, due to this, through impeachment procedure has been removed from the office held can be abolished in the only way possible – by amending the relevant provisions of the Constitution accordingly.

Parliamentary procedure before instituting impeachment proceedings

The Constitutional Court's ruling of 18 December 2019

In its conclusion of 19 December 2017, interpreting the issues relating to the beginning of impeachment proceedings in the Seimas, the Constitutional Court held that, *inter alia*, the actions preceding the beginning of impeachment, i.e. before the Seimas adopts a resolution on instituting impeachment proceedings in the Seimas against a concrete person (where such actions include, *inter alia*, the initiative of members of the Seimas to institute impeachment and the investigation of the reasonableness of the charges brought by them in a commission set up by the Seimas or in another structural unit of the Seimas), do not constitute a stage of impeachment proceedings; these actions preceding the beginning of impeachment constitute a parliamentary procedure that cannot be regarded as a legal process *stricto sensu*: in the course of this parliamentary procedure, the Seimas does not decide on the application of constitutional responsibility of a person, but only whether there is a basis for instituting impeachment.

The Constitutional Court has held that, under Article 74 of the Constitution, the establishment of the procedure for impeachment proceedings is within the competence of the Seimas: it must define it in the Statute of the Seimas (rulings of 11 May 1999 and 25 January 2001).

In view of the fact that … the actions preceding the beginning of impeachment constitute a parliamentary procedure … the Constitution, *inter alia*, Article 74 thereof, requires that the Statute of the Seimas regulate, *inter alia*, the actions preceding the beginning of impeachment, i.e. before the Seimas adopts a resolution on instituting impeachment proceedings against a concrete person in the Seimas, among other things, that the Statute of the Seimas regulate the procedure for the formation of a commission of the Seimas for investigating the reasonableness of the charges brought against the said person.

Declaring private interests

The Constitutional Court's ruling of 19 December 2019

… it should be noted that, under the Constitution, *inter alia*, the provision of Paragraph 3 of Article 5 thereof that state institutions serve the people, and under the constitutional principle of responsible governance, in order to ensure transparency and publicity in the management of state, municipal, and other public affairs, *inter alia*, in order to prevent corruption and abuse of power in the management of these affairs, the legislature may impose the duty to declare private interests on various persons, *inter alia*, state and municipal politicians, as well as state officials performing their functions in exercising state authority, state servants, persons applying to the respective positions, and other persons whose activities are connected with guaranteeing the public interest, *inter alia*, with the use of funds from the state and municipal budgets. It should be noted that, in doing so, the legislature must respect the norms and principles of the Constitution, *inter alia*, the requirements arising from the constitutional principle of a state under the rule of law.

[…]

… after the legislature, under the Constitution, *inter alia*, the provision of Paragraph 3 of Article 5 thereof that state institutions serve the people, and under the constitutional principle of responsible governance, imposes the duty to declare private interests on persons, *inter alia*, on state and municipal politicians, as well as state officials performing their functions in exercising state authority, state servants, persons applying to the respective positions, and other persons whose activities are connected with guaranteeing the public interest, *inter alia*, with the use of funds from the state and municipal budgets, the

constitutional principle of a state under the rule of law gives rise to the duty to establish a clear procedure for declaring such interests, so that the persons are aware of what is required by law and are able to direct their behaviour in accordance with the requirements of law when declaring their private interests.

4.5. STATE AWARDS

State awards

The Constitutional Court's ruling of 12 May 2006

Citizens of the Republic of Lithuania, citizens of foreign states, or stateless persons may be conferred awards of the State of Lithuania (orders, medals, and other decorations) in recognition of their merit to the State of Lithuania (ruling of 30 December 2003). The Seimas establishes state awards of the Republic of Lithuania (Item 18 of Article 67 of the Constitution), whereas the President of the Republic confers state awards (Item 22 of Article 84 of the Constitution). Persons who performed exceptional deeds demanding extraordinary efforts or even self-sacrifice where the said deeds provided exceptional benefits to the State of Lithuania, its society, or certain spheres of life of this country, in recognition of their merit to the State of Lithuania, are honoured in the name of the state by means of state awards.

[…]

When establishing state awards (*inter alia*, establishing the system thereof), the Seimas has broad discretion; however, it must follow the constitutional concept of state awards; the said concept implies that state awards are granted namely in recognition of merit and that the said merit should be merit to Lithuania (for the State of Lithuania, for its society, or for certain spheres of life of this country). The grounds on the basis of which persons may be awarded must be clear; such grounds must be established by means of a law. A law must also establish the procedure for nominating a person for a state award.

The constitutional concept of state awards should also be respected when granting state awards. The President of the Republic has rather broad freedom of the discretion to decide whether or not to award a proposed person. It should be stressed that the Constitution does not oblige the President of the Republic to confer a certain state award on a certain person or persons (in recognition of their certain merit); however, when conferring state awards, the President of the Republic must pay regard, *inter alia*, to the requirements for fulfilling conscientiously the duties of his/her office, and for being equally just to all, as established in Article 82 of the Constitution.

On the other hand, a law may provide that, if a person does not meet certain formal criteria established by law, he/she may not be conferred a state award, or, if he was granted a state award, he/she must be deprived of this state award.

Conferring a certain state award is not the implementation of the right or a legitimate expectation of a person, even who is without doubt of merit to Lithuania, but rather such an assessment of his/her merit where the said assessment is within the discretion of and depends on the will of the President of the Republic;

… a state award is a sign of state estimation towards a person; therefore, a state award may not be related to the provision of material, financial, or other benefits of any kind (with the exception, of course, of the order, medal, etc. itself) to an awarded person. The Constitution does not imply that a person who was conferred a state award of any kind could expect, let alone demand, any additional material, financial, or other benefits, privileges, etc. only because he/she has been conferred the award.

The constitutional institution of state awards is not identical to other constitutional institutions, *inter alia*, those related to the provision of support, care, welfare, maintenance, financial or other benefits established in the Constitution (thus, constitutionally justifiable and not regarded as privileges) to various persons.

[…]

If a person meets the requirements set by law and there are grounds provided for by law, the material and financial support, the provision of other material, financial benefits by the state to the person may be

related to the same deeds (activity) that earned a person a certain state award. However, it should be stressed that, as such, the mere fact that a person was granted a state award should not serve as the grounds for allocating him/her state material and financial support, or other material and financial benefits, etc. If such a legal regulation were established, it would have to be regarded as one deviating from Paragraph 2 Article 32 of the Constitution, according to which the rights of ownership (national and municipal included) are protected by law, and if Paragraph 2 of Article 23 of the Constitution were interpreted in conjunction with the provision of Paragraph 2 of Article 128 of the Constitution, whereby the procedure for the possession, use and disposal of state-owned property is established by law, the said legal regulation would also have to be regarded as one deviating from Paragraph 2 of Article 128 of the Constitution, as well as from the constitutional principle of a state under the rule of law and the constitutional concept of state awards.