5. THE SEIMAS

5.1. THE SEIMAS AS THE REPRESENTATION OF THE NATION

The Seimas as the representation of the Nation

The Constitutional Court's ruling of 13 May 2004

Under the Constitution, the Seimas is the representation of the Nation (ruling of 30 December 2003). The Seimas is an institution of state authority executing legislative power. The constitutional nature of the Seimas, as the representation of the Nation, determines its special place in the system of institutions of the branches of state power, its functions, and its competence.

The Seimas as the representation of the Nation (Articles 2 and 4 and Paragraph 1 of Article 55 of the Constitution)

The Constitutional Court's ruling of 25 May 2004

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.

The Seimas as the representation of the Nation and its functions

The Constitutional Court's ruling of 1 July 2004

Under the Constitution, only the Seimas is the representation of the Nation. 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.

The constitutional nature of the Seimas as the representation of the Nation determines its special place in the system of the institutions of the branches of state power, its functions and powers necessary to perform these functions of the Seimas. While implementing its constitutional powers, the Seimas performs the classical functions of the parliament of a democratic state under the rule of law: the Seimas passes laws (legislative function), carries out parliamentary control over executive and other state institutions (save courts) (control function), establishes state institutions, appoints and releases their heads and other state officials (founding function), approves the state budget and supervises its execution (budgetary function), etc. (ruling of 13 May 2004).

5.2. THE FUNCTIONS AND POWERS OF THE SEIMAS

5.2.1. General provisions

The powers of the Seimas are limited by the Constitution (Paragraph 2 of Article 5 of the Constitution)

The Constitutional Court's ruling of 12 July 2001

When preparing and adopting legal acts, institutions of state power must comply with the principle of a state under the rule of law, which is consolidated in the Constitution. Paragraph 2 of Article 5 of the Constitution provides that the scope of powers is limited by the Constitution. This means that the Seimas, as the legislator of laws and other legal acts, is independent inasmuch as its powers are not limited by the Constitution. The right of the Seimas to adopt, amend, supplement laws and other legal acts or declare them as null and void is indisputable; however, it may implement this by following the procedure established in the Constitution and the principles of legal compatibility. Thus, the Seimas, regulating certain relationships by means of a law, may not violate the principles and norms of the Constitution.

The Seimas is bound by its own laws

The Constitutional Court's ruling of 11 July 2002

… the Seimas is bound not only by the Constitution, but also by its own laws. Under the Constitution, laws may establish a legal regulation defining the implementation of the powers of the Seimas and, thus, binding on the Seimas; however, the Seimas is not absolutely free to subject itself to any limitations by means of laws: binding itself by means of laws, the Seimas may not violate the Constitution.

The functions and powers of the Seimas

The Constitutional Court's ruling of 13 May 2004

The constitutional powers of the Seimas are consolidated in Article 67 of the Constitution. The said article provides that the Seimas: considers and adopts amendments to the Constitution (Item 1); passes laws (Item 2); adopts resolutions on referendums (Item 3); calls elections for the President of the Republic of Lithuania (Item 4); establishes state institutions provided for by law, and appoints and releases their heads (Item 5); gives or does not give its assent to the candidate proposed by the President of the Republic for the post of the Prime Minister (Item 6); considers the programme of the Government, presented by the Prime Minister, and decides whether to give its assent to it (Item 7); on the proposal of the Government, establishes and abolishes the ministries of the Republic of Lithuania (Item 8); supervises the activities of the Government and may express no confidence in the Prime Minister or a minister (Item 9); appoints the justices and Presidents of the Constitutional Court and the Supreme Court (Item 10); appoints and releases the Auditor General and the Chairperson of the Board of the Bank of Lithuania (Item 11); calls elections to municipal councils (Item 12); forms the Central Electoral Commission and alters its composition (Item 13); approves the state budget and supervises its execution (Item 14); establishes state taxes and other compulsory payments (Item 15); ratifies and denounces international treaties of the Republic of Lithuania and considers other issues of foreign policy (Item 16); establishes the administrative division of the Republic (Item 17); establishes the state awards of the Republic of Lithuania (Item 18); issues acts of amnesty (Item 19); imposes direct rule and martial law, declares states of emergency, announces mobilisation, and adopts a decision to use the armed forces (Item 20).

It needs to be noted that the list of the constitutional powers of the Seimas consolidated in Article 67 of the Constitution is not a final one. On the one hand, various powers of the Seimas are consolidated in other articles (parts thereof) of the Constitution. For instance, Article 74 of the Constitution provides that 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 is done through impeachment proceedings established in the Statute of the Seimas. Article 75 of the Constitution prescribes that the officials appointed or elected by the Seimas, with the exception of the persons specified in Article 74 of the Constitution, are dismissed from office when the Seimas expresses no confidence in them by a majority vote of all the members of the Seimas. Under Article 106 of the Constitution, the Seimas has the right to apply to the Constitutional Court by its resolution

and to request the Constitutional Court to investigate whether the legal acts indicated in Article 102 of the Constitution are not in conflict with the Constitution (and whether substatutory acts are not in conflict with the Constitution and with laws) and to request a conclusion from the Constitutional Court on the issues indicated in Paragraph 3 of Article 105 of the Constitution. Under Item 11 of Article 84 and Paragraph 5 of Article 118 of the Constitution, the Seimas gives or does not give its assent to a candidate for the post of the Prosecutor General of the Republic of Lithuania or his/her release from duties; according to Item 14 of Article 84 of the Constitution, the Seimas gives or does not give its assent to candidates for the posts of the Chief of the Army and the Head of the Security Service. Under Article 100 of the Constitution, the Seimas may give its consent to hold the Prime Minister or a minister criminally liable, to detain him/her, or to have his/her liberty restricted otherwise. Under Paragraph 1 of Article 128 of the Constitution, the Seimas adopts decisions concerning state loans and other basic property liabilities of the state. Also, additional powers of the Seimas are established in various articles (parts thereof) of the Constitution.

On the other hand, attention should be paid to the fact that some powers of the Seimas that are established in Article 67 of the Constitution are particularised and defined in more detail in other articles (parts thereof) of the Constitution. For example, the provision of Item 9 of Article 67 of the Constitution that the Seimas, *inter alia*, "may express no confidence in the Prime Minister or a Minister" is particularised by the provision "Upon considering the response of the Prime Minister or the Minister to the interpellation, the Seimas may decide that the response is not satisfactory, and, by a majority vote of half of all the Members of the Seimas, may express no confidence in the Prime Minister or the Minister" of Paragraph 3 of Article 61 of the Constitution. The provision of Item 14 of Article 67 of the Constitution, whereby the Seimas, *inter alia*, supervises the execution of the state budget, is particularised in Item 4 of Article 94 of the Constitution, according to which the Government, *inter alia*, submits to the Seimas a report on the execution of the budget; thus, under the Constitution, the Seimas has the powers to approve this report. The provision of Item 20 of Article 67 of the Constitution, whereby the Seimas imposes direct rule and martial law, declares states of emergency, announces mobilisation, and adopts a decision to use the armed forces, is particularised in Paragraph 1 of Article 142 of the Constitution, under which the Seimas imposes martial law, announces mobilisation or demobilisation, or adopts the decision to use the armed forces when the need arises to defend the Homeland or to fulfil the international obligations of the State of Lithuania, as well as in Paragraph 1 of Article 144 of the Constitution, according to which, when a threat arises to the constitutional system or social peace in the state, the Seimas may declare a state of emergency throughout the territory of the State or in any part thereof, where the period of the state of emergency may not exceed six months. The powers of the Seimas established in Article 67 of the Constitution are also particularised and defined in more detail in other articles (parts thereof) of the Constitution.

It should also be noted that, under the Constitution, the powers of the Seimas may be established and are established not only in the Constitution, but also in laws. In some cases, the fact that certain powers of the Seimas consolidated in the Constitution may be specified in laws in a more concrete manner is directly indicated in the Constitution. For instance, as mentioned before, under Item 16 of Article 67 of the Constitution, the Seimas ratifies and denounces international treaties of the Republic of Lithuania and considers other issues of foreign policy; Paragraph 1 of Article 138 of the Constitution stipulates which international treaties of the Republic of Lithuania are ratified and denounced by the Seimas; while Paragraph 2 of the same article provides that laws, as well as international treaties, may also provide for other cases when the Seimas ratifies international treaties of the Republic of Lithuania. Under Item 3 of Article 67 of the Constitution, the Seimas adopts resolutions on referendums, while Paragraph 3 of Article 9 of the Constitution provides that a referendum is also called if not less than 300 000 citizens with the electoral right so request and, under Paragraph 2 of the same article, the Seimas calls a referendum in cases established by law. While implementing the right, which is directly consolidated in the Constitution, to particularise its certain constitutional powers by means of laws, the Seimas must pay regard to the norms and principles of the Constitution.

The Seimas, as the representation of the Nation, also has the right to establish, by means of a law, such its powers that are not *expressis verbis* indicated in the Constitution, but which, however, are designed for the implementation of the constitutional functions of the Seimas. Implementing its right, directly established in the Constitution, to particularise its certain constitutional powers by means of laws, as well as establishing, by means of laws, its powers that are not *expressis verbis* indicated in the Constitution, the Seimas is bound by the Constitution. The fact that the Seimas, while passing laws, is bound by the Constitution, as well as by its own laws, is an essential element of the constitutional principle of a state under the rule of law (rulings of 6 December 2000, 14 January 2002, and 24 January 2003).

It is clear from the constitutional provisions in which the powers of the Seimas are established that the Seimas, while implementing its constitutional powers, performs the classical functions of the parliament of a democratic state under the rule of law: the Seimas passes laws (legislative function), carries out parliamentary control over executive and other state institutions (save courts) (control function), establishes state institutions, appoints and dismisses their heads and other state officials (founding function), approves the state budget and supervises its execution (budgetary function), etc.

The said functions of the Seimas as the representation of the Nation of a democratic state under the rule of law are constitutional values. Under the Constitution, the legislature and other lawmaking subjects may not establish any such a legal regulation that would deny the said constitutional functions of the Seimas or would restrict the possibilities of performing them, since thereby the Seimas, the representation of the Nation, would be hindered from effective functioning in the interests of the Nation and the State of Lithuania.

In order that it might properly perform its parliamentary functions and implement its constitutional powers, the Seimas, the representation of the Nation, must have exhaustive and objective information about the processes taking place in the state and society, as well as about the situation in various areas of the life of the state and society and arising problems. The availability of such information is a necessary precondition for the effective activity of the Seimas in the interests of the Nation and the State of Lithuania, as well as for the proper fulfilment of its constitutional duty.

The constitutional functions of the Seimas and the powers of the Seimas consolidated in the Constitution presuppose the powers of the Seimas in every case when it becomes necessary to decide a certain question that falls under the constitutional competence of the Seimas and to seek the exhaustive and objective information needed to adopt particular decisions. The necessity to have such information means that, if necessary, the Seimas can rely not only on publicly known information or that presented to it by state institutions and other persons, but also that it can resort to concrete actions in order to receive such exhaustive and objective information. Thus, if necessary, the Seimas may conduct research by itself in order to have exhaustive and objective information about the processes taking place in the state and society, as well as about the situation in various areas of the life of the state and society and arising problems. This activity of the Seimas, as a parliament, logically follows from the mission that it has, as well as from its constitutional functions and constitutional powers.

The right of the Seimas to receive information that is necessary to exercise its constitutional powers (also see 5.4. The structure of the Seimas, the ruling of 4 April 2006 ("Ad-hoc investigation commissions of the Seimas"))

The Constitutional Court's ruling of 4 April 2006

Under the Constitution, the Seimas is obliged to establish such a legal regulation that would create the legal preconditions for receiving information needed to perform its constitutional powers.

In its ruling of 13 May 2004, the Constitutional Court held that, as the Seimas has the powers in every case, when it becomes necessary to decide a certain issue falling under the constitutional competence of the Seimas, to seek the exhaustive and objective information needed to adopt particular decisions, it also has the discretion to form such its structural subunits that would be assigned to conduct research in order to obtain exhaustive and objective information about the processes taking place in the state and society and about the situation in various areas of the life of the state and society. In the same ruling, the Constitutional Court also

held that, as the Seimas, under the Constitution, has the discretion to establish its structure, it also has the discretion to form its structural subunits and the discretion to establish the names of its structural subunits, their competence, composition, interrelations among them, their term of activity, as well as to formulate certain tasks for them; while establishing this, the Seimas is bound by the norms and principles of the Constitution.

Under Article 76 of the Constitution, the structure and procedure of activities of the Seimas are established by the Statute of the Seimas, which has the force of a law. In this context, it should be mentioned that it is impossible to interpret only linguistically the provision that the structure and procedure of activities of the Seimas are established by the Statute of the Seimas, i.e. only as meaning that the powers of the structural subunits of the Seimas may be established only in the Statute of the Seimas; for instance, in order that it could perform its constitutional functions, the Seimas may also require to form such its structural subunits that would have the powers with regard to various state or municipal institutions, their officials, or other persons. Such powers may be related to the receipt of information from state or municipal institutions, their officials, or from other persons about the processes taking place in the state and society, as well as about the situation in various spheres of the life of the state and society and arising problems; the receipt of this information cannot be dependent on the fact whether or not particular institutions or other persons are accountable to the Seimas; where it is necessary to establish the authoritative empowerments of a structural subunit of the Seimas in regard of the institutions, their officials, or other persons that are not accountable to the Seimas (including the right to demand the information the submission whereof is regulated in laws), such powers of the structural subunit of the Seimas must be established by means of a law (ruling of 13 May 2004).

It needs to be noted that, in a democratic state under the rule of law, it is not allowed to deny the powers of the parliament – the representation of the Nation to take measures, *inter alia*, to form the structural subunits of the parliament for this purpose, and to commission them to conduct necessary research in order to receive information about the processes taking place in the state and society, as well as about the situation in various areas of the life of the state and society and arising problems; otherwise, the proper fulfilment of the functions of the parliament – the representation of the Nation and the adoption of necessary decisions would not be ensured. The said powers arise from the very essence of parliamentary democracy and are one of the features of parliamentarism. In the practice of the parliaments of democratic states under the rule of law, the possibility for parliaments to take measures in order to receive information about processes taking place in the state and society, as well as about the situation in various areas of the life of the state and society and arising problems is also implemented by means of such institutions as ad hoc commissions (which are assigned to conduct certain research) formed by parliaments, parliamentary hearings, deliberations, etc.

The decisions of the Seimas

The Constitutional Court's decision of 15 May 2009

The Constitution, constitutional laws, laws, as well as the Statute of the Seimas, which has the force of a law, bind the Seimas and each member of the Seimas when they pass laws and perform other functions (rulings of 4 April 2006 and 22 February 2008).

The majority principle is among the democratic principles of adopting decisions in the Seimas (rulings of 22 July 1994 and 4 April 2006). The political will of the majority of the members of the Seimas is reflected in decisions adopted by the Seimas (conclusion of 31 March 2004 and the ruling of 4 April 2006). Under the Constitution, the will of the Seimas regarding the adoption of particular decisions may not be expressed otherwise than by vote of the members of the Seimas at a sitting of the Seimas and the adoption of a particular legal act.

It also needs to be noted that, under the Constitution, every decision of the Seimas, regardless of its expression (legal form), can be impugned before the Constitutional Court with regard to the compliance of this decision (act of the Seimas) with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution. Under the Constitution, the subjects specified in Paragraph 1 of Article 106 of the Constitution,

inter alia, not less than 1/5 of all the members of the Seimas, i.e. a group of not less than 29 members of the Seimas, can do so.

The duty of the Seimas to adopt decisions that are specified in the Constitution

The Constitutional Court's decision of 15 May 2009

The activity of a member of the Seimas, which is based on the constitutional principle of the free mandate of a member of the Seimas, and the powers of the Seimas as the representation of the Nation may not be opposed. While implementing its constitutional powers, the Seimas has the duty to adopt particular decisions, as, for instance, under the provisions of Item 4 of Article 67 and Article 80 of the Constitution, the Seimas calls a regular election of the President of the Republic, which is held on the last Sunday two months before the expiry of the term of office of the President of the Republic; according to the provisions of Paragraph 3 of Article 59 of the Constitution, the Seimas adopts a resolution regarding the loss of the mandate of a member of the Seimas who either does not take the oath according to the procedure established by law or takes a conditional oath, etc. Consequently, under the Constitution, all the members of the Seimas, as representatives of the Nation, not only acquire particular rights, but they must also perform certain duties stemming from the Constitution and the laws not in conflict with it.

The prerogatives of the Seimas to approve the state budget, to establish taxes and other compulsory payments, and to establish the list of constitutional laws

The Constitutional Court's ruling of 11 July 2014

… under the Constitution, certain laws may not be adopted by referendum, as, for instance:

– under Item 14 of Article 67 of the Constitution, the Seimas approves the state budget and supervises its execution; Article 130 of the Constitution provides that the Government draws up a draft state budget and presents it to the Seimas not later than 75 days before the end of the budget year; under Paragraph 1 of Article 131 of the Constitution, the draft state budget is considered by the Seimas and is approved by law before the start of the new budget year; as held in the Constitutional Court's ruling of 15 February 2013, the budgetary function of the Seimas is its classical function, and it is one of the most important functions of the parliament of a democratic state under the rule of law;

– under Item 15 of Article 67 of the Constitution, the Seimas establishes state taxes and other compulsory payments; the Constitutional Court has held on more than one occasion that the Constitution consolidates the prerogative of the Seimas to establish taxes (rulings of 9 October 1998 and 15 March 2000, the decision of 20 September 2005, and the ruling of 16 December 2013), as well as that state taxes and other compulsory payments may be established only by the Seimas (rulings of 26 April 2001, 3 June 2002, and 17 November 2003);

– under Paragraph 3 of Article 69 of the Constitution, the Seimas establishes the list of constitutional laws by a 3/5 majority vote of the members of the Seimas; as held in the Constitutional Court's ruling of 1 December 1994, under the Constitution, the list of constitutional laws may be established only by the Seimas.

The right of the Seimas to receive information that is necessary to exercise its constitutional powers; requirements for a legal regulation governing the submission of information, *inter alia*, an activity report, by state institutions to the Seimas

The Constitutional Court's ruling of 30 December 2015

The Constitutional Court has held that, in order that it might properly perform its parliamentary functions and implement its constitutional powers, the Seimas, the representation of the Nation, must have exhaustive and objective information about the processes taking place in the state and society, as well as about the situation in various areas of the life of the state and society and problems arising therein; the availability of such information is a necessary precondition for the effective activity of the Seimas in the interests of the Nation and the State of Lithuania, as well as for the proper fulfilment of its constitutional

duty (rulings of 13 May 2004 and 4 April 2006). Under the Constitution, the Seimas is obliged to establish such a legal regulation that would create legal preconditions for receiving the information necessary to perform its constitutional powers (ruling of 4 April 2006).

The Constitution, *inter alia*, Item 18 of Article 84 thereof, which prescribes that the President of the Republic makes annual reports at the Seimas, *inter alia*, on the situation in Lithuania, Paragraph 1 of Article 101 thereof, which provides that, at the request of the Seimas, the Government or individual ministers must give an account of their activities to the Seimas, and Paragraph 2 of Article 134 thereof, under which the Auditor General submits a conclusion to the Seimas concerning the report on the annual execution of the budget, implies that the Seimas, as the representation of the Nation, is provided with different information about the life of the state and society, as well as the activity of various state institutions. The receipt of such information is linked with the striving for open society, as consolidated in the Preamble to the Constitution, also with the principle, laid down in Article 1 of the Constitution, that the State of Lithuania is a republic, as well as with the principles of parliamentary democracy established in various provisions of the Constitution.

In the context of the constitutional justice case at issue, it should be noted that the constitutional separation and interaction of state powers, as well as the function of parliamentary control and budgetary function implemented by the Seimas, imply the possibilities of the legislature to regulate the information, *inter alia*, the annual activity report of an institution, which is submitted to the Seimas, as the representation of the Nation, for having access to and considering the information submitted in proper ways and under a particular procedure not only by the heads of the Government and other executive authorities, but also by the heads of those institutions which, under Paragraph 1 of Article 5 of the Constitution, are not classified as either the executive or legislative powers. When doing that, the legislature is bound by the Constitution. The principle of the separation of powers, as consolidated in Article 5 (Paragraphs 1 and 2 thereof) and other articles of the Constitution, and the functions of the Seimas, as reflected in the whole of the powers conferred on the Seimas under Article 67, do not imply, *inter alia*, with regard to information and, thus, also activity reports, to be submitted by state institutions to the Seimas, any such a legal regulation under which, after the head of a state institution submits the relevant information in the form of a report, the procedure of accounting to the Seimas by the institution (or its head) would be considered not completed until the Seimas has approved the submitted report, i.e. under which it would be required that the Seimas not only becomes acquainted with and considers the information provided in the report, but also adopts a special resolution on approving the submitted report.

… in a democratic state under the rule of law, officials and their institutions must observe laws and follow law in their activities; while carrying out the functions that are important to society and the state, state institutions and officials must not face any threat if they fulfil their duties without violations of laws. … 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. When interpreting Paragraphs 1 and 2 of Article 5 and Article 67 of the Constitution, *inter alia*, in the context of the constitutional principle of a state under the rule of law, it should be noted that, if the Seimas were vested with the powers to adopt a resolution on giving or not giving its approval to annual activity reports submitted by the heads of state institutions, these heads would be not protected against possible pressure or unjustified interference with their activities, despite the fact that they would perform their functions in observance of the Constitution and law and while acting in the interests of the Nation and the State of Lithuania; such a legal regulation would be incompatible with the Constitution, *inter alia*, Paragraphs 1 and 2 of Article 5 and Article 67 thereof; and the establishment of such a legal regulation would unreasonably expand the constitutional powers of the Seimas.

[…]

… it is impossible to interpret Article 76 of the Constitution only linguistically, i.e. as meaning that it is enough that only the Statute of the Seimas consolidates the powers of the Seimas or its structural subunits

(*inter alia*, committees) that are significant to its work to receive, regularly or upon request, the information from the state institutions (with the exception of courts), *inter alia*, the state officials appointed by the Seimas or the President of the Republic or their headed institutions, concerning their activity, *inter alia*, in the form of a report, as well as establishes (explicitly or partially implicitly) the obligations for these officials or the institutions headed by them to provide the information, *inter alia*, in the form of a report, to the Seimas on a regular basis or upon request. Such powers and obligations of the Seimas, *inter alia*, related to the form of reports, their submission and receipt, are applicable to the officials who, according to their functions or the functions fulfilled by the institutions they head and thus having the guarantees of independence, must be independent, should be established not only in the Statute of the Seimas, but also by the law consolidating the legal situation of the respective state institution.

[…]

At the same time, it needs to be noted that, as mentioned before, in a democratic state under the rule of law, officials and their institutions must observe laws and follow law in their activities; in the area of the legal regulation of the activities of state institutions and officials, the principles of a state under the rule of law are implemented, among other things, by combining trust in state officials with public control over their activities and with their responsibility to the public; the legal system must provide for the possibility of removing from office those state officials who violate laws, who raise personal or group interests above the interests of society, or who discredit state authority by their actions. Thus, it needs to be emphasised that, while considering the annual activity report of an institution at the Seimas, or when it transpires from the information submitted in the annual activity report of an institution during its consideration at the Seimas that the head of the state institution, who submitted the said report, may have violated laws and may have raised personal or group interests above the interests of society, the separation of powers in Lithuania (from the aspect of separation and coordination of the powers of the Seimas and the President of the Republic to appoint and dismiss heads (officials) of state institutions, as, *inter alia*, reflected in Article 67 of the Constitution), as consolidated in the Constitution, *inter alia*, Paragraphs 1 and 2 of Article 5 thereof, does not prevent the legislature from establishing also such a legal regulation for dismissing of the heads (officials) of state institutions, who are appointed by the Seimas (as well as by the President of the Republic upon assent of the Seimas), under which the Seimas could *in corpore*: (1) consider and adopt a resolution on no confidence in such a head of a state institution, as provided for in Article 75 of the Constitution (and in the relevant provisions of the Statute of the Seimas); (2) by means of an act (statement, declaration, resolution, etc.), provided for in the Statute of the Seimas, on expressing the will of the representation of the Nation concerning the issues significant to the state, to publicly address the President of the Republic and propose that the head of a state institution who was appointed by the President of the Republic upon assent of the Seimas be dismissed from his/her office by applying the appropriate grounds of dismissal provided for by law (these grounds may not include the application to the President by the Seimas, as this application is not binding on the President of the Republic). However, the sole refusal by the Seimas to approve an annual activity report submitted to the Seimas (or a legitimate refusal by the head of a state institution to submit information requested by the Seimas) may not serve as a ground for the Seimas to consider and adopt a resolution on expressing no confidence in the head of the state institution where the head of a state institution concerned was appointed by the Seimas (or to submit the proposal to the President of the Republic that the head of a state institution be dismissed from office where the head concerned was appointed by the President upon the assent of the Seimas).

5.2.2. Legislation

The powers of the Seimas to pass laws and other legal acts

The Constitutional Court's ruling of 28 September 2011

… under the Constitution, the Seimas passes constitutional laws, laws, resolutions on the implementation of laws, and other legal acts (Articles 67, 69, and 70 and Item 2 of Article 94 of the Constitution). The Constitutional Court has held that passing laws is one of the most important functions of the Seimas as the representation of the Nation, as well as its constitutional competence (ruling of 19 June 2002).

[…]

The Constitutional Court has … held that, under the Constitution, the Seimas, as the representation of the Nation and the institution of legislative power, may pass laws and other legal acts regulating most varied social relationships (ruling of 4 April 2006).

… the Seimas, as the institution of legislative power, has broad discretion in forming the state policy in various areas of social life … as well as in respectively regulating, by legal acts, social relationships in these areas. While implementing its powers to form the state policy in certain areas of public and state life … the Seimas is obliged to pay regard to the norms and principles of the Constitution.

5.2.3. The budgetary function

See 11. The state budget and finances, 11.1. The state budget. The property liabilities of the state. Taxes.

5.2.4. Parliamentary control

Also see 7. The Government.

The right of a member of the Seimas to submit inquiries as a form of parliamentary control (Paragraph 1 of Article 61 of the Constitution)

The Constitutional Court's ruling of 30 June 1994

… the provision of Paragraph 1 of Article 61 of the Constitution [establishes] the right of the members of the Seimas to submit inquires as a form of parliamentary control. Among the "state institutions formed or elected by the Seimas" that are mentioned in the said article, an exception is applied only to courts, because their independence is guaranteed under Articles 109 and 114 of the Constitution.

The powers of the Seimas to exercise parliamentary control over the National Audit Office

The Constitutional Court's ruling of 6 December 1995

… the National Audit Office, a state institution exercising economic financial control, [supervises] the lawfulness of the possession and use of state-owned property and the execution of the state budget. It is accountable directly to the Seimas, which exercises parliamentary control over this institution.

Granting the Government the powers to act and exercising control over its activities (for more on this matter, see 7. The Government, 7.2. The formation of the Government. The return of powers. Resignation)

The Constitutional Court's ruling of 10 January 1998

The Seimas, by giving its assent to a programme of the Government, confers the powers on the Government to act; the constitutional norms regulating the activity of the Government, as well as those consolidating the principle of the responsibility of the Government to the Seimas, are thus implemented: it

has been established in the constitutional structure of the branches of power that only the Government having the confidence of the Seimas may exercise its powers. The legal form of conferring such powers is voting in the Seimas for giving the assent to a programme of the Government.

[…]

… by expressing its confidence in the programme of the Government, the Seimas takes the obligation to supervise as to how the Government will be acting in implementing its own programme. A programme of the Government is the basis of the political and legal responsibility of the Government to the Seimas because the Government is jointly and severally responsible to the Seimas for its general activities. The Seimas that has conferred the powers on the Government to act may express no confidence in the Government or the Prime Minister. The consequence of the expression of no confidence is the resignation of the Government.

[…]

Conferring the powers on the Government to act and exercising control over its activities are an important sphere of the competence of the Seimas. Article 67 of the Constitution provides for the following prerogatives of the Seimas: the Seimas gives or does not give its assent to the candidate proposed by the President of the Republic for the post of the Prime Minister; considers the programme of the Government, presented by the Prime Minister, and decides whether to give its assent to it; supervises the activities of the Government and may express no confidence in the Prime Minister or a minister, etc. Under Paragraph 1 of Article 96 of the Constitution, the Government is jointly and severally responsible to the Seimas for the general activities of the Government. …

[…]

… by giving its assent to the programme of the Government, the Seimas expresses its confidence in the Government in principle for the period until the powers of the Seimas expire. Naturally, this does not mean that, if the Government resigns, the same programme will be approved again.

Granting the Government the powers to act (Paragraph 5 of Article 92 of the Constitution)

The Constitutional Court's ruling of 20 April 1999

The personal composition of the Government is formed by the Prime Minister and by the President of the Republic. However, the mere approval of the composition of the Government is not enough so that the Government could begin to act. The Government must have the confidence of the Seimas. Therefore, Paragraph 5 of Article 92 of the Constitution provides that "a new Government shall receive the powers to act after the Seimas gives assent to its programme by a majority vote of the Members of the Seimas participating in the sitting". The assent to the programme of the Government means that the Government is empowered to implement the provisions of its programme.

[…]

… the Government is a collegial institution that is jointly and severally responsible to the Seimas for its general activities. Therefore, under the Constitution, the beginning of the powers of the Government is linked with the assent given by the Seimas to its programme but not with the personal composition of the Government. Considering whether to give its assent to a programme of the Government, the Seimas does not discuss the issues of the personal composition of the Government, since the appointment of ministers is the prerogative of the Prime Minister and the President of the Republic. Voting for giving its assent to a programme of the Government, the Seimas expresses its consent in order that the Government would manage national affairs in the manner as provided for by such a programme. As long as the Seimas does not give its assent to a programme of the Government, the Government has no powers to act.

[…]

… the fact that the Seimas gives its assent to the programme of the Government by which the Government receives its powers to act consolidates the principle of expressing confidence in the Government by the Seimas *in corpore*.

The powers of the Seimas to supervise the activity of the Government (Item 9 of Article 67 and Article 101 of the Constitution)

The Constitutional Court's ruling of 20 April 1999

The Seimas not only empowers the Government to act, but also, conforming to Item 9 of Article 67 of the Constitution, supervises the activities of the Government. For instance, under Paragraph 1 of Article 101 of the Constitution, at the request of the Seimas, the Government or individual ministers must give an account of their activities to the Seimas. The Seimas, by a majority vote of all the members of the Seimas and by secret ballot, may express no confidence in the Government (Item 2 of Paragraph 3 of Article 101 of the Constitution). The Constitution also provides for other ways as to how the Seimas might carry out the supervision of the Government.

The composition of the Government may change due to various reasons. Under Paragraph 2 of Article 101 of the Constitution, when more than half of the ministers are replaced, the Government must once again receive its powers from the Seimas; otherwise, the Government must resign. The institution of receiving powers once again is one of the forms of the supervision of the Government by the parliament. By applying such a form, the Seimas can verify whether the programme of the Government that was approved by the Seimas is still carried out after more than half of the ministers are replaced. The procedure for receiving powers once again is regulated by the Statute of the Seimas.

Such a constitutional regulation of the powers of state institutions and their interrelations in the course of forming the Government and granting it powers once again reflects the principle of the separation and balance of state powers, as established in the Constitution.

… the fact that the Seimas gives its assent to the programme of the Government by which the Government receives its powers to act consolidates the principle of expressing confidence in the Government by the Seimas *in corpore*. Changing the area of governance entrusted to a minister is important from the aspect of his/her responsibility. From the standpoint of the interrelations between the Government *in corpore* and the Seimas, it is not the replacement of individual ministers in the Government (in cases where a member of the Government is appointed to head another ministry etc.) that is important, but rather the fact whether due to such changes more than half of the new ministers are replaced in the Government. In such a case, the Seimas has a constitutional ground for verifying whether the Government continues to carry out the programme that was approved by the Seimas.

Expressing no confidence in an official appointed or elected by the Seimas as one of the ways of parliamentary control (Article 75 of the Constitution)

The Constitutional Court's ruling of 24 January 2003

Article 75 of the Constitution prescribes: "The officials appointed or elected by the Seimas, with the exception of the persons specified in Article 74 of the Constitution, shall be dismissed from office when the Seimas expresses no confidence in them by a majority vote of all the Members of the Seimas."

The said article of the Constitution consolidates the right of the Seimas to dismiss from office those officials who have been appointed or elected by the Seimas, with the exception of the persons specified in Article 74 of the Constitution. This is done by following a special parliamentary procedure entailing the submission of a motion of no confidence. No confidence is expressed by a majority vote of all the members of the Seimas.

The institution of the expression of no confidence is not only one of the means of parliamentary control exercised by the Seimas, but also an important guarantee of the activity of the officials appointed or elected by the Seimas, since such officials, provided there are no grounds due to which they may not hold their office on the whole, may be dismissed from office prior to the expiry of the term of their powers in cases where more than half of all the members of the Seimas vote in favour of no confidence. Expressing no confidence is a ground for dismissing an official appointed or elected by the Seimas from office; expressing no confidence must be linked to the assessment of the activity of the official concerned; therefore, the regulation of the procedure for the parliamentary expression of no confidence must be such that would ensure the due

process of law that, *inter alia*, means that officials against whom no confidence is expressed should have a real opportunity to present to the Seimas their explanations and to counter, at the sitting of the Seimas, all arguments on which the motion of no confidence is based.

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

The Constitutional Court's decision of 21 November 2006

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

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

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

The powers of the Seimas to exercise parliamentary control

The Constitutional Court's ruling of 16 May 2019

… under the Constitution, the Seimas exercises parliamentary control over the Government (ruling of 24 December 2002).

Thus, the power of the Seimas, consolidated in Item 14 of Article 67 of the Constitution, to supervise the execution of the state budget means not only that the Seimas, under Item 4 of Article 94 of the Constitution, approves a report on the execution of the budget, but also that the Seimas supervises the execution of the state budget by means of the forms of parliamentary control over the Government that are established by the Constitution.

In this context, it should be noted that the National Audit Office is an institution exercising economic and financial control, which supervises the lawfulness of the possession and use of state-owned property and the execution of the state budget; it is accountable directly to the Seimas, which exercises parliamentary control over this institution (ruling of 6 December 1995). Thus, the power of the Seimas, consolidated in

Item 14 of Article 67 of the Constitution, to supervise the execution of the state budget also means that the Seimas supervises the execution of the state budget by means of the forms of parliamentary control over the State Audit Office that are established by the Constitution.

It should also be noted that, in exercising its power under Item 14 of Article 67 of the Constitution to supervise the execution of the state budget, the Seimas, while having regard to the Constitution, *inter alia*, the principles of responsible governance and a state under the rule of law, which are consolidated in the Constitution, may also exercise parliamentary control over the institutions that have been founded by means of laws, are accountable to the Seimas, and are independent managers of state budget appropriations.

5.2.5. The establishment of institutions and the appointment of officials

The powers of the Seimas to form the Central Electoral Commission and to change its composition, as well as the right of control arising from such powers (Item 13 of Article 67 of the Constitution)

The Constitutional Court's ruling of 30 June 1994

The Central Electoral Commission is an institution formed by the Seimas (Item 13 of Article 67 of the Constitution); therefore, the Seimas has a certain right to exercise control over this institution insofar as this is in line with the provisions pertaining to the limitation of the powers of state institutions. It is primarily based on the provision of Paragraph 1 of Article 61 of the Constitution, which establishes the right of the members of the Seimas to submit inquires as a form of parliamentary control. Among the "state institutions formed or elected by the Seimas" that are mentioned in the said article, an exception is applied only to courts, because their independence is guaranteed in Articles 109 and 114 of the Constitution. Such independence of the Central Electoral Commission is not envisaged in the Constitution.

Secondly, the Seimas has certain possibilities of exercising control over the Central Electoral Commission; such possibilities are expressed in the right vested in the Seimas to change the composition of the said commission, as consolidated in Item 13 of Article 67 of the Constitution. It should be noted that the prerogative of the Seimas to change the composition of the Central Electoral Commission is not defined by any criteria in the Constitution; however, the said commission is limited by particular provisions of [the law], which has been adopted by the Seimas itself.

Finally, Article 107 of the Constitution establishes the right of the Seimas to adopt itself a final decision only in cases where election laws are violated. Such a decision of the Seimas must be based on the respective conclusion of the Constitutional Court. In case of doubt as to whether there were the violations of election laws during the elections of the President of the Republic or the elections of the members of the Seimas, under Paragraph 5 of Article 106 of the Constitution, the right to request the Constitutional Court to give a conclusion is vested in the Seimas, and, as regards an election to the Seimas, the President of the Republic of Lithuania also has such a right.

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

The Constitutional Court's ruling of 3 June 1999

In establishing the functions and powers of the institutions of legislative power and those of executive power in the Constitution, interaction between such functions and powers is also provided for. Such a norm is consolidated in Item 8 of Article 67 of the Constitution: the Seimas "shall, upon the proposal of the Government, establish and abolish the ministries of the Republic of Lithuania". …

[…]

Item 8 of Article 67 of the Constitution consolidates the right of the Seimas to establish and abolish ministries. The implementation of such powers of the Seimas is bound by the concrete powers of the Government that are consolidated in the Constitution: if the Government does not present a particular

proposal, the Seimas may not adopt a decision whether to establish or abolish a ministry. Thus, this norm of the Constitution ensures the balance of power between the legislative and executive branches.

The powers of the Seimas to appoint and release the heads of the state institutions that are provided for by law (Item 5 of Article 67 of the Constitution)

The Constitutional Court's ruling of 24 January 2003

Under 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 Item 5 of Article 67 of the Constitution in the context of the case at issue, it should be noted that this 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. Under Item 5 of Article 67 of the Constitution, the Seimas may release from duties the heads of the state institutions that are provided for in laws only on the grounds for release from duties, as established in the Constitution and/or laws, and by following the procedure for release from duties, as established in the Constitution and/or laws. When releasing from duties those heads of the state institutions that are provided for in laws, whom it appointed itself, the Seimas must act on such a basis and follow such a procedure established in laws where the said basis and procedure are not in conflict with the Constitution. Otherwise, Item 5 of Article 67 of the Constitution would be violated.

Under the Constitution, a legal act releasing from duties the head of a state institution provided for by law, where the said head was appointed by the Seimas, is always an individual legal act; therefore, the form of such a legal act is not that of a law; such an act is a different act of the Seimas, i.e. a substatutory legal act. Under Paragraph 2 of Article 70 of the Constitution, such legal acts of the Seimas are signed by the Speaker of the Seimas. The said acts come into force on the day following their publication, unless the acts themselves establish another procedure for their entry into force. Under the Constitution, it is not permitted to release from duties, by law, the head of a state institution provided for by law where the said head was appointed by the Seimas, as this could lead to such a legal situation where the Seimas, which has the constitutional powers to dismiss the head of a state institution provided for by law where the said head was appointed by the Seimas, would not be able to implement such powers alone: as any other law, a law releasing from duties the head of a state institution provided for by law where the said head was appointed by the Seimas must be submitted to the President of the Republic for signing and promulgation; the President of the Republic is entitled not to sign such a law and may, on reasonable grounds, refer it back to the Seimas for reconsideration; a law reconsidered by the Seimas would be deemed adopted only if the amendments and supplements submitted by the President of the Republic are adopted, or if more than half of all the members of the Seimas vote for the law.

If the head of a state institution provided for by law where the said head was appointed by the Seimas is released from duties by law, the powers of the Seimas that are established in Item 5 of Article 67 of the Constitution to release from duties the heads of state institutions provided for by law where the said heads were appointed by the Seimas would be limited; therefore, the constitutional principle of the separation of powers would be violated simultaneously.

The powers of the Seimas in appointing and releasing judges (Item 10 of Article 67 and Paragraphs 2 and 3 of Article 112 of the Constitution)

The Constitutional Court's decision of 15 May 2009

The Constitution establishes such a procedure of the appointment and release of judges and presidents of courts of general jurisdiction and specialised courts of various levels under which the said judges and presidents of courts are appointed and released by the institutions of other branches of state power – executive power and legislative power; thus, they are appointed and released, correspondingly, by the President of the Republic and the Seimas, i.e. the institutions that are formed on a political basis.

[…]

… legislative power also participates in the course of appointing and releasing justices and the President of the Supreme Court and judges and the President of the Court of Appeal. The constitutional powers of the Seimas to appoint and release judges are consolidated in the provisions of Paragraphs 2 and 3 of Article 112 of the Constitution and in Item 10 of Article 67 thereof; the said Item 10 provides, *inter alia*, that the Seimas appoints justices and the President of the Supreme Court. Thus, the Seimas participates in appointing and releasing not all judges, but only the judges and presidents of the two highest-level courts of general jurisdiction. It also needs to be noted that the Seimas implements these powers together with the President of the Republic.

In order to appoint or release a justice or the President of the Supreme Court, the President of the Republic must propose that the Seimas appoint or release such a person, while the decision on the appointment of the said person as a justice or the President of the Supreme Court or his/her release from duties is adopted by the Seimas. The Seimas, after it receives the proposal from the President of the Republic, may appoint a certain person as a justice or the President of the Supreme Court, and (*inter alia*, if certain circumstances come to light that are important for such appointment or release) it can also decide not to appoint this person as a justice or the President of the Supreme Court, or it can decide not to release a certain justice or the President of the Supreme Court from duties if, under the Constitution, the release of the justice in question is not mandatory.

[…]

On receiving a proposal from the President of the Republic that a justice or the President of the Supreme Court be released from duties, the Seimas must ascertain whether the said fact of an objective character really exists, i.e. whether the term of powers of a justice or the President of the Supreme Court, as established by law, has expired, and, provided it is recognised that the term of powers has expired, the Seimas must adopt an individual act of the application of law regarding the release of the said justice or the President of the Supreme Court from duties. Thus, in the case where it is established that there is the objective fact that the term of powers of the said justice or the President of the Supreme Court has expired, the release of such a person from duties is mandatory. The same is *mutatis mutandis* applied to the chairpersons of the divisions of the Supreme Court.

5.2.6. Other powers

The powers of the Seimas to establish state awards (Item 18 of Article 67 of the Constitution) (for more on state awards, see 4. The state and its institutions, 4.5. State awards)

The Constitutional Court's ruling of 7 September 2010

The grounds of the constitutional institution of state awards are consolidated, *inter alia*, in Item 18 of Article 67 … of the Constitution.

Item 18 of Article 67 of the Constitution provides that the Seimas establishes the state awards of the Republic of Lithuania.

When interpreting the power of the Seimas to establish state awards, which is consolidated in Item 18 of Article 67 of the Constitution, in conjunction with the power of the Seimas to pass laws, which is consolidated in Item 2 of Article 67 of the Constitution, it should be held that, under the Constitution, the Seimas may establish state awards by means of passing a law, i.e. by establishing in such a law, *inter alia*, the system and types of state awards, the insignia of awards, and the grounds for conferring them.

[…]

The content of the constitutional institution of state awards was revealed, to a certain extent, in the Constitutional Court's ruling of 12 May 2006. *Inter alia*, the following was held in the said ruling of the Constitutional Court:

[…]

– 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 specifically in recognition of merit and that the said merit should be merit to Lithuania (to the State of Lithuania, its society, or certain spheres of the 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. …

[…]

… the Constitution, *inter alia*, gives rise to the duty of the legislature to establish such grounds for conferring state awards, according to which, *inter alia*, it would be clear which persons may not be conferred state awards at all.

… in the course of establishing the grounds for conferring state awards it is not permitted to establish any final list of persons entitled to receive awards or any final list of merit entitling persons to receive awards.

The powers of the Seimas related to the use of the armed forces (Item 20 of Article 67 and Article 142 of the Constitution) (for more on national defence, see 13. Foreign policy and national defence, 13.2. National defence)

The Constitutional Court's ruling of 15 March 2011

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

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

[…]

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

[…]

… under the Constitution, *inter alia*, Article 140 thereof, in the course of deliberating and deciding national defence issues, various state institutions and officials take part: *inter alia*, the State Defence Council, which considers and coordinates the main issues of state defence (and which consists of the President of the Republic, the Prime Minister, the Speaker of the Seimas, the Minister of National Defence, and the Commander of the Armed Forces) and the Government, the Minister of National Defence, and the Commander of the Armed Forces, who are responsible before the Seimas for managing and commanding the armed forces of the state; however, decisions on the main issues of national defence are taken by two state institutions: the Seimas and the President of the Republic. The Seimas is empowered to adopt final decisions on the imposition of martial law, on the announcement of mobilisation and demobilisation, on the adoption of the decision to use the armed forces when the need arises to defend the Homeland or to fulfil the international obligations of the State of Lithuania, whereas the President of the Republic, in the event of an armed attack threatening the sovereignty of the state or its territorial integrity, has the powers to immediately adopt such decisions (concerning defence against the armed aggression, the imposition of martial law throughout the state or in its separate part, and the announcement of mobilisation) that are submitted for approval at the next sitting of the Seimas.

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

[…]

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

The powers of the Seimas to adopt a final decision on the results of an election to the Seimas (Paragraph 3 of Article 107 of the Constitution)

The Constitutional Court's ruling of 27 May 2014

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. Under Item 1 of Paragraph 3 of Article 105 of the Constitution, the Constitutional Court presents a conclusion on whether there were the violations of the election law during the elections of the members of the Seimas. As held by the Constitutional Court in its decision of 29 November 2012, the Seimas, after receiving the conclusion of the Constitutional Court that the election law was violated during the election of the members of the Seimas, is obliged to adopt a final decision.

The powers of the Seimas, established in Paragraph 3 of Article 107 of the Constitution, to take a final decision on the results of an election to the Seimas should be interpreted in conjunction with, *inter alia*, the provisions of Item 13 of Article 67 and Paragraph 5 of Article 106 of the Constitution.

Under Item 13 of Article 67 of the Constitution, the Seimas forms the Central Electoral Commission and alters its composition. The Constitutional Court has held that, according to the aforesaid provision, in Lithuania, the universal institution for the organisation of elections – the Central Electoral Commission – must be formed (decision of 11 July 1994 and the conclusion of 26 October 2012). It should be noted that the constitutional mission of the Central Electoral Commission to organise elections also implies the powers of this commission to determine and announce the results of elections to the Seimas.

Paragraph 5 of Article 106 of the Constitution provides that the Seimas and the President may request from the Constitutional Court conclusions on whether the election law was violated, *inter alia*, during the elections of the members of the Seimas (Item 1 of Paragraph 3 of Article 105 of the Constitution). It should be noted that a doubt as to whether the election law was violated, *inter alia*, when the Central Electoral Commission was implementing its powers consolidated in the Constitution and laws in relation to the establishment of the final results of the elections to the Seimas, may constitute the grounds for requesting the aforesaid conclusion from the Constitutional Court; under Item 1 of Paragraph 3 of Article 105 of the Constitution, the Constitutional Court must verify whether such a doubt is justified.

It should be emphasised that, once the Constitutional Court presents the conclusion that the election law was not violated during the election of the members of the Seimas, there are no grounds to doubt the results established by the Central Electoral Commission for the election to the Seimas and no grounds for the Seimas to take a final decision provided for in Paragraph 3 of Article 107 of the Constitution. Thus, under Paragraph 3 of Article 107 of the Constitution, the Seimas has the powers to take a final decision on the results of an election to the Seimas only in cases where, subsequent to an inquiry of the Seimas or the President, the Constitutional Court gives the conclusion that the election law was violated during the election of the members of the Seimas.

It should be noted that, under Paragraph 3 of Article 107 of the Constitution, the Seimas takes a final decision on the results of elections to the Seimas only on the basis of the conclusions of the Constitutional Court. It should also be noted that, under Item 1 of Paragraph 3 of Article 105 of the Constitution, it is only the institution of judicial power – the Constitutional Court – that may establish whether the election law was violated during elections to the Seimas; the establishment of violations of the election law is an object of judicial rather than political assessment.

Thus, the provision of Paragraph 3 of Article 107 of the Constitution, under which, based on the conclusions of the Constitutional Court, the Seimas conclusively decides on the issues specified in Paragraph 3 of Article 105 of the Constitution, must not be interpreted in such a manner that the Seimas is allowed to decide anew the same issue regarding which the Constitutional Court has given its conclusion; under the Constitution, the Seimas has no powers to decide on whether the conclusions of the Constitutional Court on violations of the election law are well-founded and lawful. This, *inter alia*, means that the Seimas, which, in its nature and essence, is a political institution, whose decisions reflect the political will of the majority of the members of the Seimas and are based on political arrangements and compromises, is not allowed to decide the issue of law as to whether the election law was violated, *inter alia*, to disregard the conclusion of the Constitutional Court that the election law was violated during the elections to the Seimas.

When implementing its powers, established in Paragraph 3 of Article 107 of the Constitution, to take a final decision on the results of elections to the Seimas, the Seimas is obliged to pay regard to the constitutional principles of a state under the rule of law and responsible governance.

The Constitutional Court has held on more than one occasion that, in a constitutional democracy, representative political institutions may not be formed in such a way that would raise doubts as to their legitimacy and legality, *inter alia*, that would raise doubts as to whether the principles of a democratic state under the rule of law were not violated in the course of the election of persons to representative political institutions; democratic elections are an important form of citizens' participation in the governance of the state, as well as a necessary element of the formation of state political representative institutions; elections may not be regarded as democratic or their results as legitimate and legal if elections are held by undermining the principles of democratic elections established in the Constitution and violating democratic electoral procedures (*inter alia*, the conclusion of 5 November 2004, the ruling of 1 October 2008, and the conclusion of 10 November 2012).

The principle of responsible governance, which is consolidated in the Constitution, implies that all state institutions and officials are obliged to follow the Constitution and law while performing their functions and to 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 (conclusions of 26 October 2012 and 10 November 2012).

When the Seimas is making a final decision on the final election results, an essential significance derives from the fact that certain gross violations of the principles of democratic, free, and fair elections were committed during the election, and that those violations might have distorted the genuine will of the voters. It should be noted that violations of the said electoral principles can be committed not necessarily by candidates for the members of the Seimas themselves – these violations can be committed also by other persons seeking the election of certain candidates to the Seimas.

In its conclusion of 10 November 2012, the Constitutional Court, in interpreting the requirements stemming from the constitutional principles of a state under the rule of law, responsible governance, and

those of democratic, free, and fair elections to the Seimas, *inter alia*, emphasised that candidates whose election was sought by committing gross violations of the principles of democratic, free, and fair elections may not receive a mandate of a member of the Seimas; otherwise, the confidence of the Nation in its representation and the state itself would be undermined.

Thus, while implementing its powers, provided for in Paragraph 3 of Article 107 of the Constitution, to take a final decision on the results of elections to the Seimas and having regard to the constitutional principles of a state under the rule of law and responsible governance, the Seimas, *inter alia*, is not allowed to create any preconditions for awarding a mandate of a member of the Seimas for candidates whose election was sought by committing certain gross violations of the principles of democratic, free, and fair elections.

Under Paragraph 3 of Article 107 of the Constitution, on the basis of the Constitutional Court's conclusion that the election law was violated during the election of the members of the Seimas, the Seimas takes a final decision on the results of the election to the Seimas. It should be noted that the Seimas has the powers to conclusively decide on the results of elections to the Seimas, insofar as these results are related to the violations of the election law established in the respective conclusion of the Constitutional Court.

It should be mentioned that the Constitutional Court has held on more than one occasion that legal certainty, legal security, and the protection of legitimate expectations are inseparable elements of the principle of a state under the rule of law. In the context of the constitutional justice case at issue, it should be emphasised that the constitutional principles of legal certainty, legal security, and the protection of legitimate expectations imply, *inter alia*, the requirement that the stability of the system of state power, *inter alia*, the stability of the Seimas, as a representative political institution, must be ensured. In view of this fact, it should be noted that the final results of elections to the Seimas that are established by the Seimas under Paragraph 3 of Article 107 of the Constitution may not be altered unless there is a constitutional ground for doing so.

For instance, such a constitutional ground is implied by Item 6 of Article 63 of the Constitution, under which the powers of a member of the Seimas cease when the election is declared invalid or the law on election is grossly violated.

In its conclusion of 10 November 2012, the Constitutional Court pointed out that:

– under the Constitution, the gross violations of the principles of democratic, free, and fair elections, *inter alia*, the honesty and transparency of the election process, committed during elections to the Seimas may also be established later, after the elected members of the Seimas have acquired their powers, i.e. after the elected Seimas convenes for its first sitting;

– Item 6 of Article 63 of the Constitution implies the powers of the Seimas to revoke the powers of a member of the Seimas if gross violations of the principles of democratic, free, and fair elections, which give rise to reasonable doubts regarding the lawfulness of the election of that member of the Seimas, are established after that member of the Seimas has acquired his/her powers; under Item 6 of Article 63 of the Constitution, the powers of a member of the Seimas may be revoked both when the election is declared and when it is not declared invalid (for example, it is possible to establish the election results reflecting the genuine will of the voters);

– under Item 1 of Paragraph 3 of Article 105, Paragraph 5 of Article 106, and Paragraph 3 of Article 107 of the Constitution, the Seimas may adopt a decision on revoking the powers of a member of the Seimas under Item 6 of Article 63 of the Constitution only on the grounds of the Constitutional Court's conclusion that the election law was violated during the election to the Seimas, while the Constitutional Court may present the said conclusion only following an inquiry by the Seimas or the President.

It has been mentioned that, if gross violations of the principles of democratic, free, and fair elections were committed with the aim of electing certain candidates, these candidates may not be awarded a mandate of a member of the Seimas, since, otherwise, the confidence of the Nation in its representation and the state itself could be undermined; thus, the Seimas may not create any preconditions for awarding such candidates a mandate of a member of the Seimas.

In view of this fact, it should be noted that, in the cases where, after the establishment of the final results of an election to the Seimas, the gross violations of the principles of democratic, free, and fair elections are discovered revealing that those violations were committed with the aim of electing certain candidates who have not acquired the powers of a member of the Seimas and appear on the lists of candidates as potential candidates to take up the available vacant seats of the members of the Seimas once such vacancies occur, as well as where the Constitutional Court, having received an inquiry of the Seimas or the President, gives the conclusion that the election law was violated during the election to the Seimas, the Seimas, under the Constitution (Item 6 of Article 63 thereof, interpreted in conjunction with Item 1 of Paragraph 3 of Article 105, Paragraph 5 of Article 106, and Paragraph 3 of Article 107 of the Constitution), on the grounds of the said conclusion of the Constitutional Court, is allowed to alter the final results of the election to the Seimas in the multi-member electoral constituency, *inter alia*, by removing from the list of candidates those candidates whose election was sought by committing the gross violations of the aforementioned electoral principles.

In summary, it should be noted that, under Paragraph 3 of Article 107 of the Constitution, the final results established by the Seimas for an election to the Seimas may be altered upon the emergence of a constitutional ground only in the same manner in which they have been established, i.e. only on the basis of another conclusion of the Constitutional Court.

5.2.7. Impeachment proceedings

See 4. The state and its institutions, 4.4. The responsibility of the authorities to society. The constitutional responsibility of the highest state officials.

5.3. THE CONSTITUTIONAL STATUS OF A MEMBER OF THE SEIMAS

The free mandate of a member of the Seimas (Paragraph 4 of Article 59 of the Constitution); the equality of the members of the parliament

The Constitutional Court's ruling of 26 November 1993

Paragraph 4 of Article 59 of the Constitution provides that, while in office, the members of the Seimas follow the Constitution of the Republic of Lithuania, the interests of the state, as well as their own consciences, and may not be restricted by any mandates. Thus, the Constitution consolidates the free mandate of a member of the Seimas and does not recognise any imperative mandate. The essence of the free mandate lies in the freedom of a representative of the Nation to implement the rights and duties vested in him/her without restricting this freedom by the mandates of the electorate or by the political requirements of the parties or organisations that nominated him/her, and without recognising the right to recall a member of the Seimas.

Each member of the parliament represents the entire Nation; all the members of the parliament are the representation of the Nation. When differentiating the rights of the members of the Seimas in such a way that unequal possibilities for their participation in the activities of the Seimas are created, the essential principle of a representative institution – the equality of the members of the parliament – is violated; therefore, it becomes impossible to represent the entire Nation at the Seimas and to express the interests of the Nation.

The principles of the equality of the members of the parliament and a free mandate must also be followed in forming the internal structures of the parliament. …

In determining the internal structure of the parliament, the universal principles of its formation must be chosen where such principles would ensure the equal and real opportunities for all the members of the parliament to participate in the formed structural units. Otherwise, not all the members of the parliament would have the opportunity of exercising the additional rights established for the said structural units, which would mean the violation of the principle of the equality of all the members of the parliament. … political

groups in the parliament are formed only by the members of the parliament in accordance with the procedure for their formation that is prescribed by the parliament (most frequently, they are formed on the basis of views and political goals), but not by political parties, political organisations, or their coalitions. Though political groups are in close relation with political parties, this does not mean that a political group is a political party in the Seimas or that each party that has its representatives in the Seimas is a political group at the same time. This conclusion is derived from the principle of a free mandate, which is consolidated in the Constitution.

The rights and duties of the members of the Seimas may not be linked with election laws. Firstly, these are different matters governed by a legal regulation (in the first case, elections and, in the second one, the activities of the parliament). Secondly, the matter of the regulation calls forth different criteria on the basis of which the rights and duties of the participants of legal relationships are determined.

… A decision of the parliament whereby the rights of the members of the parliament to participate in the parliamentary process are differentiated violates the rights of a member of the parliament as a representative of the Nation.

[…]

The equality of the members of the Seimas in forming political groups on the basis of views and political goals is an important element of the implementation of the principle of a free mandate. Since a political group (i.e. the members of the parliament who are registered with it) has more possibilities of participating in the activities of the parliament than a member of the Seimas who does not belong to any political group, it must be ensured that all the members of the Seimas have the possibility of freely choosing and forming political groups. Seeking to ensure the working capacity and effectiveness of the Seimas, it is important to establish the minimum number of the members of a political group.

It would be possible to guarantee the rights and possibilities of those members of the Seimas who do not register themselves as political groups, where the said rights and possibilities are equal with those of other members of the Seimas and allow the implementation of the rights of a representative of the Nation, by recognising that they are members of a mixed political group and that such a political group has equal rights with other political groups.

The remuneration of a member of the Seimas (Articles 60 and 99 of the Constitution)

The Constitutional Court's ruling of 9 November 1999

The members of the Seimas are representatives of the Nation; the Nation executes its supreme sovereign power through the members of the Seimas (Paragraph 1 of Article 55 and Article 4 of the Constitution). The members of the Seimas are capable of performing the functions of the representatives of the Nation properly only when they have the rights and duties directly consolidated and guaranteed in the Constitution and are free and independent. One of the main guarantees of the free and independent activity of a member of the Seimas is the fact that, under Paragraph 3 of Article 60 of the Constitution, the work of the members of the Seimas, as well as all expenses relating to their parliamentary activities, is remunerated from the state budget. The same article also provides that a member of the Seimas may not receive any other remuneration, with the exception of remuneration for creative activities. These constitutional provisions imply that the remuneration of a member of the Seimas must be of a sufficient amount and it must be paid regularly; the same constitutional provisions imply that, during the term of office of the Seimas, it is not allowed to establish, by means of a law, the remuneration of a member of the Seimas that is smaller from the one existing at the beginning of the term of office of the Seimas. Such a constitutional regulation of the remuneration of a member of the Seimas is established in order that the members of the Seimas would properly perform their obligations as representatives of the Nation.

[…]

It should be noted that the grounds for establishing the remuneration of member of the Seimas are laid down not only in Paragraph 3, but also in other paragraphs of Article 60 of the Constitution.

[…]

Article 60 of the Constitution prescribes:

“The duties of the Members of the Seimas, with the exception of their duties at the Seimas, shall be incompatible with any other duties at state institutions or organisations, or with work in business, commercial, or other private establishments or enterprises. During their term of office, the Members of the Seimas shall be exempt from the duty to perform national defence service.

A Member of the Seimas may be appointed only either as the Prime Minister or a Minister.

The work of the Members of the Seimas, as well as all expenses relating to their parliamentary activities, shall be remunerated from the State Budget. A Member of the Seimas may not receive any other remuneration, with the exception of remuneration for creative activities.

The duties, rights, and guarantees of the activities of a Member of the Seimas shall be established by law.”

Thus, Paragraph 1 of Article 60 prescribes that the members of the Seimas are prohibited from holding any other office in state institutions or organisations, as well as from working in business, commercial, or other private establishments or enterprises. Paragraph 2 of the said article provides for an exception to the limitations established in Paragraph 1 thereof: a member of the Seimas may be appointed only either as the Prime Minister or a minister. The norm set out in Paragraph 2 of Article 60 of the Constitution is a special norm with respect to the general norm formulated in Paragraph 1 of this article.

The constitutional right of a member of the Seimas to hold the office of the Prime Minister or that of a minister implies the right to receive remuneration for holding such office. This is also confirmed by Article 99 of the Constitution, wherein it is established that the Prime Minister and ministers receive remuneration established for their respective governmental duties. Paragraph 4 of Article 60 of the Constitution provides that the guarantees of the activities of a member of the Seimas and, consequently, also his/her remuneration, are established by law.

If the relation among Paragraphs 1, 2 and the other paragraphs of Article 60 of the Constitution, as well as the relation of the same article with Article 99 of the Constitution, is assessed in a systemic manner, the conclusion should be drawn that it is possible to establish different remuneration for the work performed in the capacity of a member of the Seimas for such a member of the Seimas who is appointed either as the Prime Minister or a minister.

Under the Constitution, the Seimas has the discretion to establish, by means of a law, such remuneration for the work performed in the capacity of a member of the Seimas for such a member of the Seimas who is appointed either as the Prime Minister or a minister, where the said remuneration is different from that paid to other members of the Seimas; however, when exercising such discretion, the Seimas is bound by the constitutional principles of a state under the rule of law. Consequently, in this case, the remuneration of a member of the Seimas must also be of a sufficient amount in order that such a member of the Seimas performs his/her duty as a representative of the Nation.

[…]

It has already been noted in this ruling that one of the main guarantees of the activity of a member of the Seimas is the fact that, under Paragraph 3 of Article 60 of the Constitution, the work of the members of the Seimas, as well as all expenses relating to their parliamentary activities, is remunerated from the state budget. This is one of the guarantees of the independence and the equality of the rights of the members of the Seimas. The Constitution does not contain any legal norms under which the same remuneration must be established for all the members of the Seimas regardless of the fact that a member of the Seimas may hold certain office in the Seimas or in the Government. Under Paragraphs 1, 2, and 4 of Article 60 of the Constitution, the Seimas has the discretion to establish, by means of a law, such remuneration for the work performed in the capacity of a member of the Seimas for such members of the Seimas who are appointed either as the Prime Minister or a minister, where the said remuneration is different from that paid to the other members of the Seimas. Different remuneration may also be established for those members of the Seimas who hold in the Seimas office that is provided for in the Statute of the Seimas.

The constitutional status of a member of the Seimas (Paragraph 1 of Article 55 and Paragraph 4 of Article 59 of the Constitution)

The Constitutional Court's ruling of 30 May 2003

Under Paragraph 1 of Article 55 of the Constitution, the Seimas consists of representatives of the Nation – the members of the Seimas. The constitutional status of a member of the Seimas, a representative of the Nation, means that a member of the Seimas is not a representative of any territorial community, a community or group of the citizens, a political party or some other organisation: he/she represents the whole Nation. The status of a member of the Seimas, a representative of the Nation, arises out of the provisions of the Constitution, whereby the State of Lithuania is an independent democratic republic (Article 1); the Nation executes its supreme sovereign power either directly or through its democratically elected representatives (Article 4), etc. A free mandate is an essential element of the status of a member of the Seimas as a representative of the Nation.

In its rulings of 26 November 1993 and 25 January 2001, when interpreting Paragraph 4 of Article 59 of the Constitution, according to which, while in office, the members of the Seimas follow the Constitution of the Republic of Lithuania, the interests of the state, as well as their own consciences, and may not be restricted by any mandates, the Constitutional Court stated that the Constitution consolidates the free mandate of a member of the Seimas and does not recognise an imperative mandate.

The essence of the free mandate lies in the freedom of a representative of the Nation to implement the rights and duties vested in him/her without restricting this freedom by the mandates of the electorate or by the political requirements of the parties or organisations that nominated him/her. A free mandate also means that voters have no right to recall a member of the Seimas. An early recall of a member of the Seimas would constitute one of the elements of an imperative mandate. The Constitution prohibits an imperative mandate. Democratic states do not recognise the imperative mandate of a member of the parliament; thus, they do not recognise the possibility of an early recall of a member of the parliament from his/her office, either.

It should also be noted that the Constitution consolidates the immunity of a member of the Seimas in order that members of the Seimas, as representatives of the Nation, would perform their duties without any hindrance. Article 62 of the Constitution provides that the person of a member of the Seimas is inviolable; a member of the Seimas may not be held criminally liable or be detained, or have his/her liberty restricted otherwise, without the consent of the Seimas (Paragraphs 1 and 2 of Article 62).

Under the Constitution, the duties of the members of the Seimas, with the exception of their duties at the Seimas, are incompatible with any other duties at state institutions or organisations, or with work in business, commercial, or other private establishments or enterprises (Paragraph 1 of Article 60 of the Constitution). A member of the Seimas may be appointed only either as the Prime Minister or a minister (Paragraph 2 of Article 60 of the Constitution). A member of the Seimas may not receive any other remuneration (save that of the member of the Seimas), with the exception of remuneration for creative activities (Paragraph 3 of Article 60 of the Constitution).

Thus, the Constitution consolidates the principle of the prohibition on a dual mandate: a member of the Seimas, as a representative of the Nation, may not simultaneously be a representative of a territorial community – a member of a municipal council.

The constitutional status of a member of the Seimas

The Constitutional Court's ruling of 1 July 2004

The Seimas consists of the members of the Seimas – representatives of the Nation. Each member of the Seimas represents the entire Nation. When fulfilling his/her constitutional obligation to represent the Nation, a member of the Seimas participates in performing all constitutional functions of the Seimas and exercises all powers of a member of the Seimas.

The continuity of the activity of the Seimas also implies the continuity of the activity of a member of the Seimas as a representative of the Nation. Under the Constitution, legal acts should establish such a structure and work procedure of the Seimas and such a legal status of a member of the Seimas that would

provide for an opportunity for each member of the Seimas to fulfil his/her constitutional obligation to be constantly involved in the work of the Seimas, the representation of the Nation, and to exercise on a continuous basis his/her constitutional powers, as a representative of the Nation.

It needs to be emphasised that the Constitution treats a member of the Seimas as a professional politician, i.e. as such a representative of the Nation whose work at the Seimas is his/her professional activity.

[…]

The Constitution consolidates the free mandate of a member of the Seimas and the constitutional obligation of a member of the Seimas to represent the Nation. The powers of a member of the Seimas must be interpreted by taking into account the overall constitutional legal regulation. On the one hand, the constitutional legal status of a member of the Seimas and the separate elements of such status (rights and duties of a member of the Seimas, the guarantees of both his/her work at the Seimas and his/her other parliamentary activities, limitations applied in respect to a member of the Seimas, etc.) should be interpreted not in isolation from one another, but as a whole and as a system, since each element of the constitutional legal status of a member of the Seimas may be constitutionally correctly understood only if linked with other elements of the constitutional legal status of a member of the Seimas and assessed as part of a single whole – the constitutional legal status of a member of the Seimas. On the other hand, the constitutional legal status of a member of the Seimas and its separate elements should also be interpreted in the context of other constitutional institutions, *inter alia*, in the context of the individual rights and freedoms, as consolidated in the Constitution – the right of ownership, the inviolability of property, and protection of the rights of ownership (Article 23 of the Constitution), the right to freely choose an occupation or business (Paragraph 1 of Article 48 of the Constitution), freedom of economic activity and initiative (Paragraph 1 of Article 46 of the Constitution), the right of citizens to freely form societies, political parties, and associations (Article 35 of the Constitution), the right of employees to establish trade unions aimed at protecting their professional, economic, and social rights and interests (Article 50 of the Constitution), etc. … the provisions of the Constitution that consolidate the constitutional legal status of a member of the Seimas may not be interpreted in such a way that the aforementioned and other constitutional rights and freedoms of a person would be violated. Still, equally important is the fact that the provisions of the Constitution that consolidate the said and other individual rights and freedoms may not be interpreted in such a way that would deny or distort the content of the constitutional legal status of a member of the Seimas as a representative of the Nation, i.e. the said provisions may not be interpreted in order to create the preconditions for a member of the Seimas to have a conflict of public and private interests, or in order to create the preconditions for a member of the Seimas not to perform or to perform improperly his/her constitutional duty to represent the entire Nation and to act in the interests of the Nation and the State of Lithuania, or in order to create the preconditions for a member of the Seimas to use the free mandate of a member of the Seimas not in the interests of the Nation and the State of Lithuania, but for his/her private benefit, or for the benefit of his/her close relatives or other persons, or in their personal or group interests, or in the interests of the political parties or political organisations, the public or other organisations, other persons, or the territorial communities that nominated or supported the said person as a candidate for the office of a member of the Seimas, or in the interests of the voters of the constituency in which the said member of the Seimas was elected. Therefore, neither the provisions of the Constitution that consolidate the constitutional legal status of a member of the Seimas nor its provisions in which the rights and freedoms of persons are consolidated may be interpreted only literally, by applying only the linguistic (verbal) method and ignoring other constitutional provisions and their links with, *inter alia*, the provisions of the Constitution that consolidate the constitutional status of a member of the Seimas and/or the rights and freedoms of persons, while ignoring the interrelation in the content of these constitutional provisions, a balance among the constitutional values, and the essence of the constitutional legal regulation as a single whole.

The oath of a member of the Seimas and the acquisition of the rights of a representative of the Nation (Article 59 of the Constitution)

The Constitutional Court's ruling of 1 July 2004

Paragraph 2 of Article 55 of the Constitution provides that the Seimas is deemed elected when not less than 3/5 of the members of the Seimas are elected. According to the Constitution, the Seimas consists of 141 members. Thus, the Seimas is deemed elected when at least 85 members of the Seimas are elected. Article 65 of the Constitution prescribes that the President of the Republic convenes the first sitting of the newly elected Seimas, which must be held within 15 days of the election of the Seimas; if the President of the Republic fails to convene the Seimas, the members of the Seimas assemble by themselves on the day following the expiry of the 15-day period. Paragraph 2 of Article 66 of the Constitution provides that the first sitting of the Seimas after its election is opened by the eldest member of the Seimas; it should be held that this is the only provision of the Constitution that *expressis verbis* consolidates the power of one – the eldest – elected member of the Seimas exercised at the Seimas; such a member of the Seimas has this power prior to acquiring all powers of a representative of the Nation.

It needs to be emphasised that, according to the Constitution, as such, the election of a member of the Seimas does not mean that an elected member of the Seimas acquires all rights of a representative of the Nation. Under the Constitution, the acquisition of all rights of a representative of the Nation is linked with the oath of a member of the Seimas; such an oath must be taken by an elected member of the Seimas at a sitting of the Seimas. Paragraph 2 of Article 59 of the Constitution prescribes that a member of the Seimas acquires all rights of a representative of the Nation only after taking an oath at the Seimas to be faithful to the Republic of Lithuania. This constitutional provision also means that a member of the Seimas does not have all rights of a representative of the Nation until he/she takes an oath – such an elected member of the Seimas is not a representative of the Nation yet; he/she does not have the powers of a member of the Seimas and may not exercise them yet.

If interpreted in the context of the principle of the continuity of the activity of the Seimas, as consolidated in the Constitution, the constitutional provisions according to which the term of office of the members of the Seimas is counted from the day when the newly elected Seimas convenes for the first sitting and those whereby the term of office of the previously elected members of the Seimas expires from the beginning of the sitting imply that the newly elected Seimas as the fully fledged representation of the Nation must begin functioning namely from the beginning of this sitting. Since a member of the Seimas, under the Constitution, acquires all rights of a representative of the Nation only after taking an oath in the Seimas to be faithful to the Republic of Lithuania, elected members of the Seimas, under the Constitution, must take an oath at the first sitting of a newly elected Seimas. According to the Constitution, the legislature must establish such a procedure of taking an oath of a member of the Seimas that all the members of the Seimas take an oath namely at the first sitting of a newly elected Seimas. An exception could be made for those elected members of the Seimas who are not able to arrive at the first sitting of a newly elected Seimas only for duly justified exceptional reasons (for example, for the reason of illness); under the Constitution, such an elected member of the Seimas must take an oath at the next sitting of the Seimas after the said duly justified exceptional reason because of which an elected member of the Seimas was not able to take the oath at the first sitting of a newly elected sitting of the Seimas no longer exists.

Paragraph 3 of Article 59 of the Constitution provides that a member of the Seimas who either does not take the oath according to the procedure established by law or takes a conditional oath loses the mandate of a member of the Seimas; the Seimas adopts a corresponding resolution thereon. It needs to be emphasised that the Constitution does not tolerate such a situation where elected members of the Seimas fail to meet at the first sitting of a newly elected Seimas or where they meet at the sitting but fail to take an oath. Such conduct of an elected member of the Seimas where he/she fails to arrive at the first sitting of a newly elected Seimas in the absence of a duly justified exceptional reason or arrives at the sitting but fails to take an oath should be evaluated as the refusal of such an elected member of the Seimas to take an oath and should result in the legal consequences provided for in Paragraph 3 of Article 59 of the Constitution – the loss of the mandate of a member of the Seimas. The conduct where the elected member of the Seimas fails to take an oath at the next sitting of the Seimas after the said duly justified exceptional reason because of which an

elected member of the Seimas was not able to take the oath at the first sitting of a newly elected sitting of the Seimas no longer exists should be evaluated in the same way and it should give rise to the same legal consequences. The Seimas must adopt a corresponding resolution thereon.

The oath of a member of the Seimas is not a mere formal or symbolic act (ruling of 25 May 2004). Such an oath is not just the solemn utterance of the words of the oath and the signing of the act of the oath. In its ruling of 25 May 2004, the Constitutional Court held that the act of the oath of a member of the Seimas is constitutionally legally significant: when taking an oath, an elected member of the Seimas publicly and solemnly assumes the obligation to act in the way that the oath taken obliges and to breach the oath under no circumstances; from the moment of taking an oath, the constitutional duty of the member of the Seimas arises to act only in the way that the oath taken obliges and to breach the oath under no circumstances.

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. A member of the Seimas assumes the obligation to be faithful to the Republic of Lithuania; to respect and uphold its Constitution and laws and to protect the integrity of its lands; and to strengthen, to the best of his/her ability, the independence of Lithuania, and to conscientiously serve the Homeland, democracy, and the welfare of the people of Lithuania. Paragraph 4 of Article 59 of the Constitution provides that, while in office, the members of the Seimas follow the Constitution of the Republic of Lithuania, the interests of the state, as well as their own consciences, and may not be restricted by any mandates. Thus, the oath of a member of the Seimas obligates him/her in all activities to follow the Constitution, the interests of the state, as well as his/her own conscience, and not to be restricted by any mandates. The oath of a member of the Seimas gives rise to the duty a member of the Seimas to respect and execute the Constitution and laws, as well as to conscientiously perform the duties of a representative of the Nation in the manner as the Constitution obliges him/her to act. In its ruling of 25 May 2004, the Constitutional Court held that 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 under 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.

The free mandate of a member of the Seimas (Paragraph 4 of Article 59 of the Constitution); the equality of the rights of the members of the Seimas

The Constitutional Court's ruling of 1 July 2004

Paragraph 4 of Article 59 of the Constitution consolidates one of the major elements of the constitutional legal status of a member of the Seimas – the free mandate of a member of the Seimas as a representative of the Nation. The Constitution consolidates the free mandate of a member of the Seimas and prohibits an imperative mandate.

The essence of the free mandate lies in the right of a representative of the Nation to implement the rights and duties established for him/her without restricting this freedom by the mandates of the electorate or by the political requirements of the parties or organisations that nominated him/her. The free mandate of a member of the Seimas also means that voters have no right to recall a member of the Seimas. An early recall of a member of the Seimas would constitute one of the elements of an imperative mandate. Democratic states do not recognise the imperative mandate of a member of the parliament; thus, they do not recognise the possibility of an early recall of a member of the parliament from his/her office, either (rulings of 26 November 1993, 9 November 1999, 25 January 2001, and 30 May 2003).

The free mandate of a member of the Seimas, which is consolidated in the Constitution, reveals the essence of the constitutional legal status of a member of the Seimas as a representative of the Nation and is inseparably linked with the equality of the members of the Seimas. Under the Constitution, each member of

the Seimas represents the entire Nation. All the members of the Seimas are equal and they must have the same opportunities to participate in the work of the Seimas. If the rights of the members of the Seimas were differentiated in such a way that unequal possibilities for their participation in the activities of the Seimas are created, the essential principle of this representative institution – the equality of the members of the parliament – would be violated; therefore, it would become impossible for the members of the Seimas to represent the entire Nation at the Seimas and to express the interests of the entire Nation. The principles of the free mandate of a member of the Seimas and the equality of the members of the Seimas must also be followed when establishing the internal structure of the Seimas. The free mandate of a member of the Seimas, which is consolidated in the Constitution, is one of the guarantees for the autonomy of the activities carried out by the members of the Seimas and for their equality (rulings of 26 November 1993, 9 November 1999, and 25 January 2001).

It should also be emphasised that 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 (ruling of 25 May 2004). … 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 under the Constitution, on the other hand. The free mandate of a member of the Seimas is not a privilege of a representative of the Nation but one of the legal measures ensuring that the Nation will be properly represented in its democratically elected representation, the Seimas, and that the representation of the Nation, the Seimas, will act only in the interests of the Nation and the State of Lithuania. For this reason, the free mandate of a member of the Seimas may not be used in the interests other than those of the Nation and the State of Lithuania. The free mandate of a member of the Seimas may not be used for the private benefit of a member of the Seimas, his/her close relatives or other persons, or in their personal or group interests, or in the interests of the political parties or political organisations, the public or other organisations, other persons, or the territorial communities that nominated or supported the said person as a candidate for the office of a member of the Seimas, or in the interests of the voters of the constituency in which the said member of the Seimas was elected, i.e. it may not be used to serve particular interests. Under the Constitution, a member of the Seimas is not a representative of political parties or political organisations, public or other organisations, interest groups, territorial communities, or the voters of the constituency in which he/she was elected, but a member of the Seimas represents the entire Nation.

The constitutional consolidation of the free mandate of a member of the Seimas, as well as the essence of the Seimas as the representation of the Nation, implies the constitutional duty of the Seimas to lay down in legal acts such a legal regulation that would create no preconditions for using the free mandate of a member of the Seimas in the interests other than the interests of the Nation and the State of Lithuania, i.e. for the private benefit of a member of the Seimas, his/her close relatives or other persons, or in their personal or group interests, or in the interests of the political parties or political organisations, the public or other organisations, other persons, or the territorial communities that nominated or supported the said person as a candidate for the office of a member of the Seimas, or in the interests of the voters of the constituency in which the said member of the Seimas was elected. The legislature must establish such a legal regulation that would ensure that a member of the Seimas works only for the Nation and the State of Lithuania, and avoids the conflict between the interests of the Nation and the State of Lithuania on the one hand and, on the other hand, the private interests of a member of the Seimas, his/her close relatives or other persons (personal or group interests), the interests of the political parties or political organisations, the public or other organisations, other persons or the territorial communities that nominated or supported the said person as a candidate for the office of a member of the Seimas, or the interests of the voters of the constituency in which the said member of the Seimas was elected. At the same time, the activity of a member of the Seimas should be legally regulated in such a manner that it would be possible to exercise effective control over whether such a conflict exists and whether a member of the Seimas uses his/her free mandate in the interests other

than the interests of the Nation and the State of Lithuania. If a member of the Seimas disregards the aforementioned requirements of the Constitution, he/she must be held liable pursuant to the Constitution and laws.

The rights of a member of the Seimas

The Constitutional Court's ruling of 1 July 2004

The most important rights of a member of the Seimas as a representative of the Nation are *expressis verbis* or implicitly consolidated in the Constitution itself. Some constitutional rights are exercised by a member of the Seimas as a single person. For instance, a member of the Seimas has the right of legislative initiative at the Seimas (Paragraph 1 of Article 68 of the Constitution); a member of the Seimas also has the right to submit an inquiry to the Prime Minister, the ministers, and the heads of other state institutions formed or elected by the Seimas; the said persons must respond orally or in writing during the session of the Seimas according to the procedure established by the Seimas (Paragraph 1 of Article 61 of the Constitution). A member of the Seimas also has the constitutional right to aspire to hold a specific office at the Seimas; this right comprises the right to hold at the Seimas such office that is directly specified in the Constitution, i.e. the office of the Speaker or that of the Deputy Speaker of the Seimas, as well as other duties at the Seimas where such duties are provided for in the Statute of the Seimas, which, under the Constitution, establishes the structure and procedure of activities of the Seimas and has the force of a law (Article 76 of the Constitution). A member of the Seimas, together with other members of the Seimas, exercises other rights laid down in the Constitution. For instance, a group of not less than 1/4 of all the members of the Seimas has the right to submit a motion to alter or supplement the Constitution of the Republic of Lithuania to the Seimas (Paragraph 1 of Article 147 of the Constitution); a group of not less than 1/5 of the members of the Seimas may interpellate the Prime Minister or a minister (Paragraph 2 of Article 61 of the Constitution), or apply to the Constitutional Court (Paragraph 1 of Article 106 of the Constitution); a group of members of the Seimas may initiate 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, as well as the members of the Seimas (Article 74 of the Constitution, the ruling of 15 April 2004). The members of the Seimas have the right on equal basis to participate when the Seimas, as the representation of the Nation, exercises its powers of the representation of the Nation established in Article 67 of the Constitution, in other articles of the Constitution, and in laws. The free mandate of a member of the Seimas consolidated in the Constitution constitutes a compulsory condition for carrying out the constitutional duty of a member of the Seimas to represent the entire Nation.

According to Paragraph 4 of Article 60 of the Constitution, the rights of a member of the Seimas are established by law. Thus, the Constitution provides for two levels in the legal regulation of the rights of a member of the Seimas: the rights established in the Constitution itself and the rights established in laws by the legislature. The aforementioned provision of Paragraph 4 of Article 60 of the Constitution implies the duty of the Seimas to lay down the rights of a member of the Seimas in laws in order to ensure the possibility of the members of the Seimas for performing, in a fully fledged manner, their constitutional obligation as the one of the representatives of the Nation. In establishing this, the legislature must pay regard to the norms and principles of the Constitution; for instance, the legislature may not establish any such rights of a member of the Seimas that would unreasonably grant privileges to members of the Seimas, since the requirement of, *inter alia*, Paragraph 2 of Article 29 of the Constitution, whereby no one may be granted any privileges on the grounds of social status, would be ignored.

In this context, it should also be noted that … under Article 76 of the Constitution, the structure and procedure of activities of the Seimas are established by the Statute of the Seimas. It is obvious that the legal regulation of the structure and procedure of activities of the Seimas is linked with the establishment of the rights of a member of the Seimas; therefore, the aforementioned provisions of Paragraph 4 of Article 60 of the Constitution and Article 76 of the Constitution may not be opposed. For instance, in its ruling of 13 May 2004, the Constitutional Court held that the aforementioned provision of Article 76 of the

Constitution may not be interpreted only linguistically. It was also held in the same ruling of the Constitutional Court that, in order that it could properly perform its constitutional functions, the Seimas may also need to form such structural subunits that would have powers with respect to various state and municipal institutions, their officials, and other persons, and that, if it is necessary to establish the powers of authority of a structural subunit of the Seimas with respect to institutions, their officials, or other persons that are not accountable to the Seimas, such powers of the said structural subunit of the Seimas must be established by means of a law. In the same way, where the rights of a member of the Seimas comprise certain powers of a member of the Seimas with respect to institutions, their officials, or other persons that are not accountable to the Seimas, then, under the Constitution, such powers should be established by means of a law. However, insofar as the rights of a member of the Seimas are linked only with his/her activity at the Seimas, i.e. with the structure and procedure of activities of the Seimas itself, such rights may be established in the Statute of the Seimas.

The duties of the members of the Seimas

The Constitutional Court's ruling of 1 July 2004

In order that a member of the Seimas would be able to continuously perform his/her duties, as a representative of the Nation, the Constitution itself establishes not only certain rights, but also the duties of a member of the Seimas. Some duties of a member of the Seimas are formulated in the Constitution *expressis verbis.* Other duties of a member of the Seimas are not *expressis verbis* formulated in the Constitution, but they are consolidated implicitly – they are derived from the constitutional legal status of a member of the Seimas as a representative of the Nation. Still, some other duties of a member of the Seimas are consolidated not in the Constitution, but in lower-ranking legal acts: laws and the Statute of the Seimas.

The Constitution *expressis verbis* consolidates only some duties of a member of the Seimas. For instance, a member of the Seimas must follow the taken oath of a member of the Seimas, which obligates him/her to be faithful to the Republic of Lithuania, to respect and uphold its Constitution and laws and to protect the integrity of its lands, to strengthen, to the best of his/her ability, the independence of Lithuania, and to conscientiously serve the Homeland, democracy, and the welfare of the people of Lithuania (Paragraph 2 of Article 59 of the Constitution, 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). Paragraph 4 of Article 59 of the Constitution provides for the duty of a member of the Seimas, while in office, to follow the Constitution of the Republic of Lithuania, the interests of the state, as well as his/her own conscience, and not to be restricted by any mandates.

Other constitutional duties of a member of the Seimas are formulated in the Constitution as certain limitations applied to a member of the Seimas – the incompatibility of the duties of a member of the Seimas with other duties or another occupation, except the cases established in the Constitution, and the prohibition precluding a member of the Seimas from receiving other remuneration, save the exceptions established in the Constitution (Article 60 of the Constitution); these limitations for the members of the Seimas are established in the Constitution in order to ensure the free mandate of a member of the Seimas as a representative of the Nation, the continuity of his/her work at the Seimas, as well as that of other parliamentary activity in which he/she is engaged.

Those members of the Seimas who hold at the Seimas such office that is directly specified in the Constitution, i.e. that of the Speaker or the Deputy Speaker of the Seimas, in addition to their duties of a member of the Seimas as representatives of the Nation, also have other duties and respective rights *expressis verbis* specified in the Constitution. For instance, the Speaker of the Seimas has the duty (as well as the right) to sign an adopted law on an alteration of the Constitution if the President of the Republic does not sign it during the specified time (Paragraph 2 of Article 149 of the Constitution), to sign laws adopted by the Seimas if they are not signed or referred back by the President of the Republic to the Seimas for reconsideration within the period indicated in the Constitution (Paragraphs 2 and 4 of Article 72 of the Constitution), to sign other acts adopted by the Seimas and the Statute of the Seimas (Paragraph 2 of

Article 70 of the Constitution), to temporarily hold the office of the President of the Republic in cases under the Constitution (Paragraph 1 of Article 89 of the Constitution), or to temporarily substitute for the President of the Republic (Paragraph 2 of Article 89 of the Constitution), to be a member of the State Defence Council (Paragraph 1 of Article 140 of the Constitution), to convene extraordinary sessions of the Seimas on the proposal of not less than one-third of all the members of the Seimas (Paragraph 2 of Article 64 of the Constitution), to submit three candidates for justices of the Constitutional Court (Paragraph 1 of Article 103 of the Constitution). The Speaker of the Seimas and the Deputy Speaker of the Seimas also has the duty (as well as the right) to preside over sittings of the Seimas (Paragraph 1 of Article 66 of the Constitution).

It should be noted that certain constitutional duties of a member of the Seimas are not *expressis verbis* formulated in the Constitution; however, they are inseparably linked with the activities of a member of the Seimas at the Seimas and with other parliamentary activity. For example, the constitutional mission of the Seimas as the representation of the Nation, as well as the constitutional legal status of a member of the Seimas as a representative of the Nation, implies the constitutional obligation of a member of the Seimas to represent the Nation; thus, it also implies the duty of a member of the Seimas to participate in sittings of the Seimas and in the activity of those Seimas structural subunits of which he/she is a member.

According to Paragraph 4 of Article 60 of the Constitution, the duties of a member of the Seimas are established by law. Thus, the Constitution provides for two levels of the legal regulation of the duties of a member of the Seimas: the duties established in the Constitution itself and the duties established in laws by the legislature. The aforementioned provision of Paragraph 4 of Article 60 of the Constitution implies the duty of the Seimas to lay down, in laws, such duties of a member of the Seimas in order to ensure that the members of the Seimas, as the representatives of the Nation, will perform their constitutional obligation in a fully fledged manner. When establishing the aforementioned provisions, the legislature is bound by the Constitution.

… under Article 76 of the Constitution, the structure and procedure of activities of the Seimas are established by the Statute of the Seimas. The legal regulation of the structure and procedure of activities of the Seimas is also related to the establishment of the duties of a member of the Seimas. Under the Constitution, the duties of a member of the Seimas that are not linked with the work of a member of the Seimas at the Seimas, i.e. those not linked with the structure and procedure of activities of the Seimas, must be established by means of a law. However, insofar as the duties of a member of the Seimas are linked only with his/her activity at the Seimas, i.e. with the structure and procedure of activities of the Seimas itself, such duties may be established in the Statute of the Seimas.

The guarantees of the parliamentary activities of a member of the Seimas

The Constitutional Court's ruling of 1 July 2004

One of the elements of the constitutional legal status of a member of the Seimas is the guarantees of both the work of a member of the Seimas at the Seimas and other parliamentary activity. When evaluating the entirety of the guarantees of both the work of a member of the Seimas at the Seimas and other parliamentary activity, as consolidated in the Constitution, it should be held that, in this regard, the constitutional legal status of a member of the Seimas, a representative of the Nation, is different in essence from the constitutional legal status of other citizens and other state officials.

The system of the guarantees of both the work of a member of the Seimas at the Seimas and other parliamentary activity comprises, *inter alia*, the immunities of a member of the Seimas. Article 62 of the Constitution provides that the person of a member of the Seimas is inviolable (Paragraph 1); a member of the Seimas may not be held criminally liable or be detained, or have his/her liberty restricted otherwise, without the consent of the Seimas (Paragraph 2).

Paragraph 3 of Article 60 of the Constitution provides that the members of the Seimas may not be persecuted for their votes or speeches at the Seimas: they may be held liable according to the general procedure only for personal insult or defamation.

The Constitution also provides for a special procedure of revoking the mandate of a member of the Seimas: under Article 74 of the Constitution, the Seimas may, by a 3/5 majority vote of all the members of the Seimas, revoke the mandate of a member of the Seimas who has grossly violated the Constitution, breached the oath, or committed a crime.

Paragraph 1 of Article 60 of the Constitution provides, *inter alia*, that, during their term of office, the members of the Seimas are exempt from the duty to perform national defence service.

According to Paragraph 3 of Article 60 of the Constitution, the work of a member of the Seimas is remunerated from the state budget. In its ruling of 9 November 1999, when interpreting this constitutional provision, the Constitutional Court held that the remuneration of a member of the Seimas must be of a sufficient amount and it must be paid regularly; the same constitutional provisions imply that, during the term of office of the Seimas, it is not allowed to establish, by means of a law, the remuneration of a member of the Seimas that is smaller from the one existing at the beginning of the term of office of the Seimas. Such a constitutional regulation of the remuneration of a member of the Seimas is established in order that the members of the Seimas would properly perform their obligations as representatives of the Nation.

The Constitution also consolidates such a guarantee of parliamentary activities of the members of the Seimas that ensures that expenses relating to their parliamentary activities are remunerated from the state budget (Paragraph 3 of Article 60 of the Constitution).

According to Paragraph 4 of Article 60 of the Constitution, the guarantees of the activities of a member of the Seimas are established by law. Thus, the Constitution provides for two levels of the legal regulation of the system of the guarantees of both the work of a member of the Seimas at the Seimas and other parliamentary activities: the guarantees established in the Constitution itself and the guarantees established in laws by the legislature. It should be noted that the aforementioned provision of Paragraph 4 of Article 60 of the Constitution implies the duty of the Seimas to lay down, in laws, the system of the guarantees of both the work of a member of the Seimas at the Seimas and other parliamentary activities in order to ensure the possibility of the members of the Seimas, as the representatives of the Nation, for performing their constitutional obligation in a fully fledged manner. In establishing this, the legislature must pay regard to the norms and principles of the Constitution; the legislature, *inter alia*, may not establish any such guarantees that would unreasonably grant privileges to members of the Seimas, since the requirement of, *inter alia*, Paragraph 2 of Article 29 of the Constitution, whereby no one may be granted any privileges on the grounds of social status, would be ignored.

… under Article 76 of the Constitution, the structure and procedure of activities of the Seimas are established by the Statute of the Seimas. The legal regulation of the structure and procedure of activities of the Seimas is also linked with the establishment of the guarantees of both the work of a member of the Seimas at the Seimas and other parliamentary activities. If the guarantees of the parliamentary activity of a member of the Seimas are related to the duties, arising therefrom, towards the institutions, their officials, and other persons that are not accountable to the Seimas, such guarantees, according to the Constitution, must be established by means of a law. However, insofar as the guarantees of both the work of a member of the Seimas at the Seimas and other parliamentary activities are linked only with his/her activity at the Seimas, i.e. with the structure and procedure of activities of the Seimas itself, such guarantees may be established in the Statute of the Seimas.

[…]

… Paragraph 1 of Article 49 of the Constitution, which provides that every working person has the right to rest and leisure as well as to annual paid leave, and Paragraph 4 of Article 60 of the Constitution, which provides that the duties, rights and guarantees of the activities of a member of the Seimas are established by law, give rise to the duty of the legislature to establish, by means of a law, the duration and other conditions of the annual paid leave of the members of the Seimas. It should also be noted that the establishment of the leave of a member of the Seimas by means of a law would also ensure that no preconditions are created for the constitutionally unfounded treatment of the period between the sessions of the Seimas as a period equivalent to the leave of the members of the Seimas or any other type of their rest.

The social guarantees of the persons who are former members of the Seimas are also an element of the constitutional legal status of a member of the Seimas, the essence of which is disclosed by the free mandate of a member of the Seimas as a representative of the Nation. The constitutional norms and principles must also be followed when establishing such guarantees by means of a law.

The limitations applicable to a member of the Seimas (Paragraphs 1, 2, and 3 of Article 60 of the Constitution)

The Constitutional Court's ruling of 1 July 2004

It has been held in this ruling of the Constitutional Court that certain constitutional duties of a member of the Seimas are formulated in the Constitution as certain limitations applied to a member of the Seimas – the incompatibility of the duties of a member of the Seimas with other duties or another occupation, except the cases established in the Constitution, and the prohibition precluding a member of the Seimas from receiving other remuneration, save the exceptions established in the Constitution; such limitations are meant to ensure the free mandate of a member of the Seimas as a representative of the Nation, the continuity of his/her work at the Seimas and his/her other parliamentary activities. When evaluating the entirety of the limitations consolidated in the Constitution and applicable to a member of the Seimas, it should be held that, in this respect, the constitutional legal status of a member of the Seimas as a representative of the Nation is different in essence from the constitutional legal status of other citizens and determines the particularities of the implementation by a member of the Seimas of certain rights of a person, which are consolidated in the Constitution, since a member of the Seimas has such rights as an individual and a citizen.

… under Article 60 of the Constitution, the duties of the members of the Seimas, with the exception of their duties at the Seimas, are incompatible with any other duties at state institutions or organisations, or with work in business, commercial, or other private establishments or enterprises (Paragraph 1); a member of the Seimas may be appointed only either as the Prime Minister or a minister (Paragraph 2); a member of the Seimas may not receive any other remuneration, with the exception of remuneration for creative activities (Paragraph 3).

… the Constitution is an integral act … all its provisions are interrelated and constitute a harmonious system … no provision of the Constitution may be interpreted only literally … no provision of the Constitution may be interpreted in such a way that the content of another constitutional provision would be distorted or denied, since thereby the essence of the whole constitutional regulation would be distorted and the balance of the values consolidated in the Constitution would be disturbed. Therefore, the provision of Paragraph 1 of Article 60 of the Constitution, whereby the duties of the members of the Seimas are incompatible with any other duties at state institutions or organisations, or with work in business, commercial, or other private establishments or enterprises, should be interpreted when taking account of the provision of this paragraph that a member of the Seimas may hold office at the Seimas, the provision of Paragraph 2 of this article that a member of the Seimas may be appointed only either as the Prime Minister or a minister, and the overall integral constitutional legal regulation, thus, when taking account of all constitutional provisions consolidating the constitutional status of a member of the Seimas (rights and duties of a member of the Seimas, the guarantees of his/her work at the Seimas and his/her other parliamentary activities, limitations applicable to a member of the Seimas, etc.), the constitutional provisions consolidating the rights of a person, as well as the purposes of the constitutional regulation, which comprise, *inter alia*, the purposes on which the functions of the legal regulation established in Paragraph 1 of Article 60 of the Constitution are based, the mission of this regulation with regard to the overall integral constitutional legal regulation, the provision of Paragraph 1 of Article 60 of the Constitution, according to which a member of the Seimas may hold office at the Seimas, the provision of Paragraph 2 of this article, whereby a member of the Seimas may be appointed only either as the Prime Minister or a minister, and also the overall integral constitutional legal regulation in general; account should also be taken of the purposes of the constitutional regulation when interpreting the provision of Paragraph 3 of Article 60 of the Constitution, according to

which a member of the Seimas may not receive any other remuneration, with the exception of remuneration for creative activities.

The purpose of the legal regulation established in Paragraph 1 of Article 60 of the Constitution is to ensure the free mandate of a member of the Seimas as a representative of the Nation, the continuity of his/her work at the Seimas and his/her other parliamentary activities, to guarantee that a member of the Seimas acts in the interests of the Nation and the State of Lithuania, but not in his/her personal or group interests, or in the interests of the political parties or political organisation, the public or other organisations, other persons, or the territorial communities that nominated or supported the said person as a candidate for the office of a member of the Seimas, or in the interests of the voters of the constituency in which the said member of the Seimas was elected, that a member of the Seimas will not use his/her status and a free mandate for his/her private benefit, or for the benefit of his/her close relatives or other persons, that each member of the Seimas will have the opportunity to perform his/her constitutional duty to continuously participate at the work of the Seimas, the representation of the Nation, to continuously exercise as a representative of the Nation his/her constitutional powers. This purpose would never be reached or the preconditions precluding the accomplishment of this purpose would be created if a member of the Seimas also had the possibility of holding other duties or another occupation, with the exception of the office *expressis verbis* specified in the Constitution or the duties allowed under the Constitution; this purpose would never be reached or the preconditions precluding the accomplishment of this purpose would also be created if a member of the Seimas received remuneration other than that specified in the Constitution.

[…]

The Constitution provides for the legal regulation, according to which the incompatibility of the duties of a member of the Seimas with any other duties or work (save the exceptions provided for in the Constitution), where the said incompatibility includes the incompatibility of the duties of a member of the Seimas with engaging in business, commerce, or other profit-making private activity, and the prohibition precluding a member of the Seimas from receiving any other remuneration (save the exceptions provided for in the Constitution) are applied in respect of a member of the Seimas from the moment when he/she acquires all rights of a representative of the Nation, i.e. when he/she takes an oath. The Constitution does not provide that, after taking an oath, a member of the Seimas may, for a certain period of time, hold another office, perform other work (save the exceptions provided for in the Constitution), engage in business, commerce, or other profit-making private activity, and receive other remuneration (save the exceptions provided for in the Constitution). A different interpretation of the Constitution, whereby, purportedly, a member of the Seimas, having taken an oath, for a certain period of time, may still hold another office or perform other work that is incompatible with the duties of a member of the Seimas (save the exceptions provided for in the Constitution), engage in business, commerce, or other profit-making private activity, would be unfounded, as the prohibitions established in the Constitution applicable to a member of the Seimas and specified in this ruling of the Constitutional Court would be disregarded; this would be in violation of the Constitution.

The incompatibility of the duties of a member of the Seimas with other duties or work (save the exceptions provided for in the Constitution), as well as the prohibition precluding a member of the Seimas from receiving other remuneration (save the exceptions provided for in the Constitution), as established in the Constitution, gives rise to the duty of the legislature to establish, by means of a law, such a legal regulation that would make it possible to verify whether the limitations imposed in Article 60 of the Constitution on a member of the Seimas are followed. Such control must be effective, public, and continuous instead of a one-off type.

According to Item 7 of Article 63 of the Constitution, the powers of a member of the Seimas cease when he/she does not give up employment that is incompatible with the duties of a member of the Seimas.

The incompatibility of the duties of a member of the Seimas with other duties or work (Paragraphs 1 and 2 of Article 60 of the Constitution)

The Constitutional Court's ruling of 1 July 2004

One of the limitations imposed on a member of the Seimas by Article 60 of the Constitution is the incompatibility of the duties of a member of the Seimas with other duties and work, save the exceptions *expressis verbis* established or implicitly envisaged in the Constitution.

The expression "The duties of the Members of the Seimas, with the exception of their duties at the Seimas" is used in Paragraph 1 of Article 60 of the Constitution. Under the Constitution, a member of the Seimas may also hold other duties in the Seimas.

The Constitution directly specifies the office at the Seimas that a member of the Seimas is allowed to hold: such office is the office of the Speaker of the Seimas or that of the Deputy Speaker.

… under Article 76 of the Constitution, the structure and procedure of activities of the Seimas are established by the Statute of the Seimas. Thus, the Statute of the Seimas may establish at the Seimas other duties that may be taken by certain members of the Seimas – the duties in the governing body of the Seimas, the duties of the heads of structural subunits of the Seimas, or other duties at the Seimas that may be held only by a member of the Seimas; the Statute of the Seimas may also provide for the possibility for a member of the Seimas to take certain duties in interparliamentary and other international institutions, which may only be taken by a member of the Seimas – the expression "their duties in the Seimas" of Article 60 of the Constitution also comprises these types of duties.

Thus, the expression "their duties in the Seimas" of Article 60 of the Constitution comprises: (1) the duties of the Speaker of the Seimas and those of the Deputy Speaker of the Seimas; (2) such duties of a member of the Seimas at the Seimas that are taken by a member of the Seimas pursuant to the Statute of the Seimas in the governing body of the Seimas or when heading a structural subunit of the Seimas, as well as other duties that may be taken at the Seimas only by a member of the Seimas; (3) such duties of a member of the Seimas in interparliamentary and other international institutions that may be taken only by a member of the Seimas.

Under the Constitution, the member of the Seimas who is the Speaker of the Seimas is *ex officio* a member of the State Defence Council (Article 140 of the Constitution); in the event that the President of the Republic dies, resigns, or is removed from office according to the procedure for impeachment proceedings, or the Seimas decides that the state of health of the President of the Republic does not allow him/her to hold office, the office of the President of the Republic is temporarily held by the Speaker of the Seimas (Paragraph 1 of Article 89 of the Constitution); the Speaker of the Seimas substitutes for the President of the Republic when the President of the Republic is temporarily abroad or falls ill and, for this reason, is temporarily unable to hold office (Paragraph 2 of Article 89 of the Constitution).

… according to Paragraph 2 of Article 60 of the Constitution, a member of the Seimas may be appointed only either as the Prime Minister or a minister. Thus, according to the Constitution, a member of the Seimas may simultaneously hold the office of the Prime Minister or a minister.

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

It should be noted that the incompatibility of the duties of a member of the Seimas with other duties or work is also *expressis verbis* consolidated from various aspects in other articles of the Constitution. For

instance, under the Constitution, the duties of a member of the Seimas are incompatible with the office of the President of the Republic (Paragraph 1 of Article 83 of the Constitution), with actual military service or alternative service, as well as with the duties of an officer, a non-commissioned officer or re-enlistee in the national defence system, the police and the interior, or with the duties of another paid official of paramilitary and security services (Article 141 of the Constitution), with the office of a judge, as well as a justice of the Constitutional Court (Paragraph 1 of Article 113 and Paragraph 3 of Article 104 of the Constitution), and with the office of a member of a municipal council (rulings of 24 December 2002, 30 May 2003).

[…]

To sum up, it should be held that the principle of the incompatibility of the duties of a member of the Seimas with other duties or work means that the duties of a member of the Seimas are incompatible with any other activity (taking a position, performing work, holding a position, fulfilling other functions, performing other tasks, holding the so-called honorary position) in a state establishment, enterprise, organisation of Lithuania, or in a municipal establishment, enterprise, organisation, or in an international establishment, enterprise, organisation, or in a private establishment, enterprise, organisation, or representing such an establishment, enterprise, organisation, with the exception of the duties *expressis verbis* or implicitly laid down in the Constitution: (1) the duties of a member of the Seimas that are specified in Paragraph 1 of Article 60 of the Constitution and comprise the office of the Speaker of the Seimas and the Deputy Speaker of the Seimas, such duties of a member of the Seimas in the Seimas that are taken by a member of the Seimas pursuant to the Statute of the Seimas in the governing body of the Seimas or when heading a structural subunit of the Seimas, other duties that may be taken in the Seimas only by a member of the Seimas, or the duties of a member of the Seimas in interparliamentary and other international institutions in cases where such duties may be taken only by a member of the Seimas; (2) the office of the Prime Minister or a minister, as specified in Paragraph 2 of Article 60 of the Constitution; (3) the duties in the associations that are specified in the Constitution where such duties are linked with his/her membership in the respective association.

The constitutional concept of the duties and work that are incompatible with the duties of a member of the Seimas (Paragraph 1 of Article 60 of the Constitution)

The Constitutional Court's ruling of 1 July 2004

… the notions "duties" and "work" used in Paragraph 1 of Article 60 of the Constitution are constitutional notions, they have the constitutional content and may not be interpreted only on the basis of the definition of similar concepts in laws and other legal acts (for example, in legal acts regulating employment or public service relations). In this regard, the duties and work specified in Paragraph 1 of Article 60 of the Constitution may not be linked with employment or similar contracts or agreements.

The notion "duties" used in the phrase "duties at state institutions or organisations" in Paragraph 1 of Article 60 of the Constitution and the notion "work" used in the phrase "work in business, commercial, or other private establishments or enterprises" in this paragraph should be interpreted by taking into consideration the purpose of the constitutional legal regulation established in this article, as well as all other constitutional provisions consolidating the constitutional status of a member of the Seimas. It should be noted that carrying out "duties" implies that the person who carries out the duties of certain office must perform certain work, fulfil certain other functions, perform certain other tasks, etc.; performing "work" implies that a person must take certain office, fulfil certain other functions, perform certain other tasks, etc. The notion "duties" used in the phrase "duties at state institutions or organisations" in Paragraph 1 of Article 60 of the Constitution and the notion "work" used in the phrase "work in business, commercial, or other private establishments or enterprises" in this paragraph mean activity; therefore, in the context of the overall constitutional integral regulation, these notions may not be confronted and they may not be interpreted literally, by ignoring their correlations.

The notion "duties" used in the phrase "duties at state institutions or organisations" in Paragraph 1 of Article 60 of the Constitution comprises any activity in a state or municipal establishment, enterprise, or

organisation of Lithuania, in a foreign or international establishment, enterprise, or organisation, or when representing such an establishment, enterprise, or organisation, if this activity is linked with taking a position, performing work, holding a position, fulfilling other functions, performing other tasks, holding the so-called honorary position, etc. (including participation in collegial management, control, and other bodies), irrespective of whether this activity is permanent, temporary, or one-off (episodic), whether this activity is remunerated in any payment or other form, whether this activity is referred to in legal acts as duties or otherwise, whether this activity is carried out in a leading position, whether a person is elected or appointed in order to carry out such activity, whether this activity is formalised on the basis of a legal contract or another legal act, or is performed without any legal contract or legal act, save the exceptions that are established *expressis verbis* or implicitly provided for in the Constitution and are specified in this ruling of the Constitutional Court. The notion "work" used in the phrase "work in business, commercial, or other private establishments or enterprises" in Paragraph 1 of Article 60 of the Constitution in its turn comprises any activity in a Lithuanian private establishment, enterprise, or organisation or in a foreign or international private establishment, enterprise, or organisation, or when representing such an establishment, enterprise, or organisation, if this activity is linked with performing work, taking a position, holding a position, fulfilling other functions, performing other tasks, holding the so-called honorary position, etc. (including participation in collegial management, control, and other bodies), irrespective of whether this activity is permanent, temporary, one-off (episodic), whether this activity is remunerated in any payment or other form, whether this activity is referred to in legal acts as work or otherwise, whether there are any other persons engaged in any activity in this establishment, enterprise, or organisation, whether this activity is carried out in a leading position, whether a person is elected or appointed in order to carry out such activity, whether this activity is formalised on the basis of a legal contract or another legal act, or is performed without any legal contract or legal act; the notion "work" used in the phrase "work in business, commercial, or other private establishments or enterprises" of Paragraph 1 of Article 60 of the Constitution also comprises any other private profit-making activity, as well as any profit-making activity engaged in without establishing an enterprise, establishment, or organisation.

The prohibition precluding a member of the Seimas from engaging in business, commerce, or other profit-making activity (Articles 23, 46, and 48 and Paragraph 1 of Article 60 of the Constitution)

The Constitutional Court's ruling of 1 July 2004

… the constitutional legal status of a member of the Seimas as a representative of the Nation is different in essence from the constitutional legal status of other citizens and determines the particularities of the implementation by a member of the Seimas of certain rights of a person, which are consolidated in the Constitution, since a member of the Seimas has such rights as an individual and a citizen.

The legal regulation laid down in Paragraph 1 of Article 60 of the Constitution should be interpreted in view of the provisions of Articles 46 and 48 of the Constitution.

Paragraph 1 of Article 46 of the Constitution stipulates that the economy of Lithuania is based on the right of private ownership, freedom of individual economic activity, and economic initiative. Paragraph 1 of Article 48 of the Constitution, *inter alia*, prescribes that everyone may freely choose an occupation or business.

The constitutional legal status of a member of the Seimas as a representative of the Nation, comprising, *inter alia*, the limitations established in Paragraph 1 of Article 60 of the Constitution, determines the particularities of the implementation of everyone's rights consolidated in Article 46 and 48 of the Constitution where such rights are exercised by a member of the Seimas as by any other person in the same manner. It needs to be noted that the provisions of Paragraph 1 of Article 60 of the Constitution, in view of the purpose of the legal regulation established in this paragraph, mean also that such a member of the Seimas who is a founder, owner, co-owner, or shareholder of a private enterprise, establishment, or organisation may not take a position, perform work, hold a position, fulfil other functions, perform other tasks, hold the so-called honorary position, etc. (including participation in collegial management, control, and other bodies)

in the said establishment, enterprise, or organisation, or represent it. This is incompatible with the constitutional legal status of a member of the Seimas: having acquired all rights of the representative of the Nation, the member of the Seimas decides that he/she will be a representative of the Nation and will not be engaged in business, commerce, or other profit-making private activity.

… under the Constitution, a member of the Seimas, as a representative of the Nation, must properly fulfil his/her constitutional obligation to represent the entire Nation, must act only in the interests of the Nation and the State of Lithuania … the activity of a member of the Seimas, a representative of the Nation, is continuous. A member of the Seimas must use his/her mandate of a representative of the Nation only in the interests of the Nation and the State of Lithuania but not for his/her private benefit, or for the benefit of his/her close relatives or other persons. The incompatibility of the duties of a member of the Seimas (such incompatibility is consolidated in Paragraph 1 of Article 60 of the Constitution) with work in business, commercial, or other private establishments or enterprises, as well as with work in establishments or enterprises a founder, owner, co-owner, or shareholder of which a member of the Seimas is, gives rise to the prohibition on engaging, in any form, in business, commerce, or other profit-making private activity. When deciding whether a certain activity of a member of the Seimas is engagement in business, commerce, etc., in each case account should be taken of the content of the activity and all other circumstances.

The legal regulation laid down in Paragraph 1 of Article 60 of the Constitution should also be interpreted with regard to the provisions of Article 23 of the Constitution.

[…]

The legal regulation established in Paragraph 1 of Article 60 of the Constitution may not be interpreted as denying the essence of the right of ownership that is consolidated in Article 23 of the Constitution. Members of the Seimas also have this right. Thus, the provisions of Paragraph 1 of Article 60 of the Constitution that consolidate the incompatibility of the duties of a member of the Seimas with, *inter alia*, engaging in business, commerce, or other profit-making private activity may not be interpreted as meaning the prohibition precluding a member of the Seimas from using his/her property, receiving income from such property, possessing property owned by him/her, etc., as well as concluding related contracts. However, under the Constitution, such activity of a member of the Seimas where he/she uses his/her property, receives income from such property, possesses property owned by him/her, etc., as well as concludes related contracts, may not take the form of business, commerce, or other profit-making private activity, as this would violate the prohibition consolidated in Paragraph 1 of Article 60 of the Constitution precluding a member of the Seimas from engaging, in any form, in business, commerce, or other profit-making private activity.

It should be noted that the activity of a member of the Seimas where he/she uses his/her property, receives income from such property, possesses property owned by him/her, etc., as well as concludes the related contracts, may have certain specific features in each area. The legislature, while paying regard to the Constitution, has the duty to establish, by means of a law, such a regulation that would make it possible to decide in each case what activity of a member of the Seimas constitutes only the use of his/her property, receiving income from such property, possessing property owned by him/her, and concluding related contracts, i.e. the activity that is allowed for a member of the Seimas under the Constitution, and what activity constitutes business, commerce, or other profit-making private activity, i.e. the activity that is not allowed for a member of the Seimas under the Constitution.

It should be noted that, in order to ensure that the prohibition (established in Paragraph 1 of Article 60 of the Constitution) precluding a member of the Seimas from engaging in business, commerce, or other profit-making private activity, the Constitution gives rise to the duty of the legislature to establish a legal regulation that would make it possible to verify in each case whether using the property of a member of the Seimas, receiving income from such property, possessing property owned by him/her, and concluding related contracts constitutes business, commerce, or other profit-making private activity. Such control must be effective, public, and continuous instead of a one-off type.

When laying down, by means of a law, the specified constitutionally necessary legal regulation, the legislature must also establish the ways of providing for the legal conditions for preventing the emergence

of incompatibility of the duties of a member of the Seimas with engaging in business, commerce, or other profit-making private activity. Such a legal regulation would also create the preconditions for avoiding the use of the mandate of a member of the Seimas for the private benefit of certain persons, i.e. to serve particular interests, rather than in the interests of the Nation and the State of Lithuania, and for avoiding a conflict between the private interests of a member of the Seimas and the interests of the Nation and the State of Lithuania, i.e. public interests; this would strengthen the trust of the Nation in members of the Seimas as representatives of the Nation and in the Seimas as the representation of the Nation. Such control is an important condition of implementing the provision of Item 7 of Article 63 of the Constitution, under which the powers of a member of the Seimas cease when he/she takes up or does not give up employment that is incompatible with the duties of a member of the Seimas.

Attention should be drawn to the fact that various methods of ensuring the incompatibility of the duties of a member of the parliament and engagement in business, as well as control over such incompatibility, is established in foreign democratic states under the rule of law as, for instance, the property of a member of the parliament is held in trust or such property must be transferred to other persons, such property is possessed anonymously, control is exercised over agreements concluded between the enterprises a founder, owner, co-owner, or a shareholder of which a member of the parliament is on the one hand, and the establishments, enterprises, and organisations of the public sector on the other hand, etc.

The right of a member of the Seimas to be a member of and take a position in an association (Article 35 of the Constitution)

The Constitutional Court's ruling of 1 July 2004

The principle of the incompatibility of the duties of a member of the Seimas with other duties and work, as established in the Constitution, as well as the prohibition precluding a member of the Seimas from receiving any other remuneration save the exceptions provided for in the Constitution, should be interpreted in the context of the constitutional rights and freedoms of persons, *inter alia*, the right of citizens to freely form societies, political parties, and associations (Article 35 of the Constitution), and the right of employees to establish trade unions (Article 50 of the Constitution).

[…]

… under the Constitution, the legislature may not establish any such a legal regulation that would limit the right of a member of the Seimas to be a member of an association specified in the Constitution and to take a position in such an association, as, in respect of the said person, this would violate the constitutional value – the right to associate or freedom of association.

The prohibition precluding a member of the Seimas from receiving other remuneration (Paragraph 3 of Article 60 of the Constitution)

The Constitutional Court's ruling of 1 July 2004

Another limitation imposed on a member of the Seimas by Article 60 of the Constitution is the prohibition precluding a member of the Seimas from receiving other remuneration, save the exceptions *expressis verbis* established or implicitly provided for in the Constitution

It needs to be stressed that the notion "remuneration" used in Paragraph 3 of Article 60 of the Constitution is a constitutional notion: it bears the constitutional content and may not be interpreted only following the definition of analogous notions in laws and other legal acts (for example, legal acts regulating employment or public service relations). In this regard, the remuneration specified in Paragraph 3 of Article 60 of the Constitution may not be linked only with remuneration paid under employment or similar contracts or agreements; the content of the notion "remuneration" used in Paragraph 3 of Article 60 of the Constitution is much broader: this notion comprises monetary payments of various types and the provision of other material benefit to a member of the Seimas.

… the Constitution treats a member of the Seimas as a professional politician, i.e. as such a representative of the Nation whose work at the Seimas is his/her professional activity. … under Paragraph 3

of Article 60 of the Constitution, the work of the members of the Seimas, as well as all expenses relating to their parliamentary activities, is remunerated from the state budget.

Under Paragraph 3 of Article 60 of the Constitution, a member of the Seimas has the right to receive the remuneration of a member of the Seimas. … in order that a member of the Seimas would be able to properly fulfil his/her duty as the one of a representative of the Nation, the remuneration of a member of the Seimas must be of a sufficient amount and it must be paid regularly; during the term of office of the Seimas, it is not allowed to establish, by means of a law, the remuneration of a member of the Seimas that is smaller from the one existing at the beginning of the term of office of the Seimas.

… under Paragraph 3 of Article 60 of the Constitution, expenses relating to the parliamentary activities of a member of the Seimas are remunerated from the state budget. In this context, it needs to be noted that such funds may be used only for the purpose specified in the Constitution, i.e. the parliamentary activity of a member of the Seimas. The legislature must establish the legal regulation that should make it possible to verify each time whether these funds are used for their intended purpose.

… a member of the Seimas may also take other duties in the Seimas, including the office of the Speaker of the Seimas and the Deputy Speaker of the Seimas, such duties of a member of the Seimas in the Seimas that are taken by a member of the Seimas pursuant to the Statute of the Seimas in the governing body of the Seimas or when heading a structural subunit of the Seimas, as well as such duties of a member of the Seimas in interparliamentary and other international institutions in cases where such duties may be taken only by a member of the Seimas.

It should be held that the constitutional right of a member of the Seimas to take such duties in the Seimas implies the right to receive additional remuneration established by law for taking such duties.

… according to the Constitution, a member of the Seimas may simultaneously hold the office of the Prime Minister or a minister. In its ruling of 9 November 1999, the Constitutional Court held that the constitutional right of a member of the Seimas to hold the office of the Prime Minister or that of a minister implies the right to receive remuneration for holding such office; this is confirmed by Article 99 of the Constitution, whereby the Prime Minister and ministers receive remuneration established for their respective governmental duties. It was also held in the Constitutional Court's ruling of 9 November 1999 that for such a member of the Seimas who is appointed either as the Prime Minister or a minister different remuneration from that of other members of the Seimas may be established for his/her activities as a member of the Seimas. However, under the Constitution, the Seimas, while having the discretion to establish, by means of a law, different remuneration for such a member of the Seimas who is appointed either as the Prime Minister or a minister from that of other members of the Seimas is bound by the constitutional requirement that in this case the amount of the remuneration of such a member of the Seimas must also be sufficient in order that the said member of the Seimas would be able to properly perform his/her duty as the one of a representative of the Nation.

… a member of the Seimas may take a position in associations specified in the Constitution where such a position is linked with his/her membership in the respective association. It should be noted that the constitutional prohibition precluding a member of the Seimas from receiving other remuneration, save the exceptions provided for in the Constitution itself, means that, under the Constitution, a member of the Seimas may not receive any remuneration for holding a position or other activity in societies, political parties or associations, or other unions.

As mentioned before, the content of the notion "remuneration" used in Paragraph 3 of Article 60 of the Constitution is broad: it comprises monetary payments of various types or the provision of other material benefit to a member of the Seimas. Therefore, under the Constitution, such a member of the Seimas who takes a certain position in an association has no right to receive from such an association remuneration for holding such a position or any other monetary payment, as well as any other material benefit.

[…]

In conclusion, it should be held that the constitutional prohibition precluding a member of the Seimas from receiving any remuneration other than that of a member of the Seimas means that a member of the

Seimas may not receive any other remuneration, with the exception of the remuneration *expressis verbis* specified or implicitly provided for in the Constitution: (1) remuneration for the duties of a member of the Seimas that are specified in Paragraph 1 of Article 60 of the Constitution and comprise the office of the Speaker of the Seimas and the Deputy Speaker of the Seimas, such duties of a member of the Seimas in the Seimas that are taken by a member of the Seimas pursuant to the Statute of the Seimas in the governing body of the Seimas or when heading a structural subunit of the Seimas, other duties that may be taken in the Seimas only by a member of the Seimas, or the duties of a member of the Seimas in interparliamentary and other international institutions in cases where such duties may be taken only by a member of the Seimas; (2) remuneration for holding the office of the Prime Minister or a minister; (3) remuneration for creative activities where a member of the Seimas carries them out not in the capacity of a subject of employment, state service, or similar relationships.

The right of a member of the Seimas to receive remuneration for creative activities; the constitutional concept of creative activities (Paragraph 3 of Article 60 of the Constitution)

The Constitutional Court's ruling of 1 July 2004

… according to Article 60 of the Constitution, a member of the Seimas is not prohibited from receiving remuneration for creative activities.

When interpreting the constitutional notion of creative activities, it needs to be noted that Paragraph 1 of Article 42 of the Constitution provides that culture, science and research, and teaching are free; Paragraph 3 of this article provides that the law protects and defends the spiritual and material interests of an author that are related to scientific, technical, cultural, and artistic work. According to the Constitution, creative activities are activities in the area of science, technology, culture or art, aimed at creating a certain result, i.e. qualitatively new, original, and specific material or spiritual values of science, technology, culture, or art, which have never existed before. Creative activities may be continuous, professional, and one-off(episodic).

The notion of creative activities, which is consolidated in the Constitution, is integral and its content does not depend, *inter alia*, on persons who are engaged in them. In this regard, there is no difference between the creative activities of a member of the Seimas and the creative activities of any other individual.

… the constitutional legal status of a member of the Seimas, a representative of the Nation, determines the particularities of the implementation by a member of the Seimas of certain rights of a person, which are consolidated in the Constitution, since a member of the Seimas has such rights as an individual and a citizen.

It has … been held in this ruling that, according to the Constitution, the duties of a member of the Seimas are incompatible with any other activity (taking a position, performing work, holding a position, fulfilling other functions, performing other tasks, holding the so-called honorary position) in a state establishment, enterprise, organisation of Lithuania, or in a municipal establishment, enterprise, organisation, or in an international establishment, enterprise, organisation, or in a private establishment, enterprise, organisation, or representing such an establishment, enterprise, organisation, with the exception of the duties of a member of the Seimas that are specified in Paragraph 1 of Article 60 of the Constitution, the office of the Prime Minister or a minister, as specified in Paragraph 2 of Article 60 of the Constitution, and a position in the societies, political parties or associations, other unions, where such a position is linked with his/her membership in the respective association.

When interpreting the provisions of Article 42 and Article 60 of the Constitution in a systemic manner, it should be held that the creative activities of a member of the Seimas are separated from employment, state service, or similar relationships and from holding a position in any establishment, enterprise, or organisation.

Thus, one of the specific features of freedom of the creative activities of a member of the Seimas is that a member of the Seimas exercises this freedom not in the capacity of a subject of employment, state service, or similar relationships.

Remuneration may be paid to an author for his/her creative activities. It is generally recognised that remuneration for creative activities is regulated by the norms of copyright law.

… the concept of creative activities is used not only in Paragraph 3 of Article 60, but also in other articles (parts thereof) of the Constitution. For instance, Paragraph 1 of Article 83 of the Constitution provides that the President of the Republic, *inter alia*, may not receive any remuneration other than the remuneration established for the President of the Republic and remuneration for creative activities; Article 99 of the Constitution provides that the Prime Minister and ministers, *inter alia*, may not receive any remuneration other than that established for their respective governmental duties and payment for creative activities; Paragraph 1 of Article 113 of the Constitution provides that judges, *inter alia*, may not receive any remuneration other than the remuneration established for judges and payment for educational or creative activities.

It is clear from the phrase "payment for educational or creative activities" in Paragraph 1 of Article 113 of the Constitution that the constitutional concepts of educational and creative activities are not identical and that each of them has its own independent content. These concepts may not be identified with one another, they are not synonyms, and none of them covers the other. Educational activities in the Constitution are separated from creative activities: educational activities are linked with education, teaching and training at educational and teaching establishments (including higher schools), whereas creative activities, as already mentioned before, are activities aimed at creating a piece of science, technology, culture, or art.

The continuity of the activities of a member of the Seimas

The Constitutional Court's decision of 10 February 2005

It was held in [the Constitutional Court's ruling of 1 July 2004] that the continuity of the activity of the Seimas implies the continuity of the activity of a member of the Seimas, as a representative of the Nation. Participation in the work of the Seimas is a constitutional duty and at the same time a right of a member of the Seimas; this means, *inter alia*, that it is not allowed to establish any such a legal regulation that, on the one hand, would allow a member of the Seimas not to participate in the work of the Seimas without duly justified exceptional reasons, and, on the other hand, would not allow or would worsen in other ways the possibilities for him/her to participate in the work of the Seimas. The constitutional duty of a member of the Seimas to participate in the work of the Seimas includes, *inter alia*, his/her duty to participate in the work of the structural subunits of the Seimas of which he/she is a member and to exercise other powers of a member of the Seimas, which are established in the Constitution, laws, and the Statute of the Seimas.

[…]

Undoubtedly, situations may occur where, due to especially important personal and other justified reasons, for a certain period of time, a member of the Seimas cannot participate in the sittings of the Seimas, the committees of the Seimas, or other structural subunits of which he/she is a member, and/or for a certain period of time he/she cannot perform other duties of a member of the Seimas. This implies the necessity to establish a procedure according to which, in the aforesaid cases, such a member of the Seimas should apply to the institution indicated in the law (in the Statute of the Seimas) for permission not to participate for the said period of time in the sittings of the Seimas, the committees of the Seimas, or other structural subunits of which he/she is a member, and not to perform for the said period of time other duties of a member of the Seimas; if the reasons specified by a member of the Seimas are especially important and justified, the aforementioned permission is granted; if such permission is not granted, the absence of a member of the Seimas from the sittings of the Seimas, the committees of the Seimas, other structural subunits of which he/she is a member, or failure to perform other duties of a member of the Seimas would be unjustified.

Situations may also arise where a member of the Seimas cannot notify the institution specified by means of a law (by the Statute of the Seimas) before a particular sitting begins that he/she will not attend that sitting. The legislature is also obliged to establish the procedure enabling the institution specified by means of a law (by the Statute of the Seimas) to decide whether the reasons of failure by the said members of the Seimas to attend a particular sitting were especially important and justified.

If a member of the Seimas has not participated in the sitting of the Seimas, of a committee, or of another structural subunit of the Seimas of which he/she is a member – regardless of whether or not he/she notified in advance about his/her absence following the established procedure, or whether or not he/she received permission from the respective institution indicated in the law (in the Statute of the Seimas) – the said time, according to the Constitution, is considered neither the time when the said member of the Seimas performed the work of a member of the Seimas indicated in Paragraph 3 of Article 60 of the Constitution, remunerable from the state budget, nor the time when the same member of the Seimas made use of the right established in Paragraph 1 of Article 49 of the Constitution to annual paid leave.

It should be noted that the exercise of the powers of a member of the Seimas is not limited to his/her participation in the sittings of the Seimas, its committees, or its other structural subunits. In this context it should be mentioned that the exercise of the powers of a member of the Seimas and, thus, the work of a member of the Seimas referred to in Paragraph 3 of Article 60 of the Constitution, also constitute the activity of a member of the Seimas when he/she carries out assignments and other tasks of the Seimas, its committees, or its other structural subunits, where, in the cases established by law, he/she represents groups of members of the Seimas, etc. The work of a member of the Seimas and his/her activity in the Seimas include performing the duties specified in Paragraph 1 Article 60 of the Constitution (office of the Speaker or the Deputy Speaker of the Seimas; such duties of a member of the Seimas at the Seimas that are taken by a member of the Seimas pursuant to the Statute of the Seimas in the governing body of the Seimas or when heading a structural subunit of the Seimas, as well as other duties that may be taken at the Seimas only by a member of the Seimas; such duties of a member of the Seimas in interparliamentary and other international institutions where the said duties may be taken only by a member of the Seimas …).

Such an activity of a member of the Seimas is the work of a member of the Seimas specified in Paragraph 3 of Article 60 of the Constitution; such work is remunerated from the state budget.

It should also be mentioned that, according to Paragraph 2 of Article 60 of the Constitution, a member of the Seimas can be appointed either as the Prime Minister or a minister. This implies the possibility of regulating their employment relationships at the Seimas in a differentiated manner; the legislature has a certain degree of discretion in this sphere.

The annual paid leave of the members of the Seimas

The Constitutional Court's decision of 10 February 2005

When interpreting the provision that the activity of the Seimas is continuous … in conjunction with the provision that the legislature has the constitutional duty to establish, by means of a law, the duration and other conditions of annual paid leave of a member of the Seimas, it should be held that the continuity of the activity of the Seimas as the representation of the Nation and the institution of legislative power and the continuity of the activity of a member of the Seimas as a representative of the Nation and a professional politician in no way implies that a member of the Seimas should not or cannot exercise the constitutional right that he/she has as any other working person to rest and leisure as well as to annual paid leave. Namely because the Constitution treats a member of the Seimas as a professional politician and due to the fact that, according to the Constitution, the work of a member of the Seimas is a permanent occupation for which a member of the Seimas receives remuneration and the proper performance of which must be ensured both by certain social guarantees and by the special guarantees of parliamentary work, which are established in the Constitution and laws, the constitutional right of a member of the Seimas to rest and leisure, as well as to annual paid leave, cannot be denied, nor can the exercise of this right be restricted without sufficient grounds.

It should be especially emphasised that, according to the Constitution, during a rest period, at leisure time, or during annual paid leave a member of the Seimas does not lose his/her status of a representative of the Nation: a member of the Seimas retains his/her status of a representative of the Nation while at work during the sessions of the Seimas, those of the committees of the Seimas or of other structural subunits when such sittings take place not during the session of the Seimas, as well as during a rest period, at leisure time

or during annual paid leave; the Seimas, even when the representatives of the Nation are on leave, does not cease to be the representation of the Nation and the institution of legislative power.

The provision [of the Constitutional Court's ruling of 1 July 2004], whereby the legislature has the duty to establish, by means of a law, the duration and other conditions of the annual paid leave of a member of the Seimas, means, *inter alia*, that the leave of the members of the Seimas must be established not by means of any type of legal acts passed by the Seimas, but precisely by means of a law, also that such a law should determine the duration of the annual paid leave of a member of the Seimas, the amount of remuneration for leave, and other essential conditions of leave.

The aforementioned provision does not mean that a law should determine a fixed time that would be the same each year for the annual paid leave of the members of the Seimas (concrete dates of its beginning and end). The Seimas, taking into consideration its agenda, considered issues, and other circumstances, can establish the time for the annual paid leave of the members of the Seimas each year separately by means of a substatutory act – a resolution of the Seimas; this resolution must be adopted on the basis of the law establishing, *inter alia*, the duration of the annual paid leave of the members of the Seimas.

Establishing, by means of a law, the duration of the annual paid leave of the members of the Seimas, as well as determining the beginning and end of the annual paid leave of the members of the Seimas each year (by means of a resolution of the Seimas), regard should be paid to the constitutional imperative that the participation in the work of the Seimas is a constitutional duty and, at the same time, a right of a member of the Seimas, also to the fact that the constitutional duty of a member of the Seimas to participate in the work of the Seimas includes, *inter alia*, his/her duty to participate in the work of the structural subunits of the Seimas of which he/she is a member and to exercise other powers of a member of the Seimas, which are established in the Constitution, laws, and the Statute of the Seimas. The sittings of the Seimas take place during regular and extraordinary sessions. Thus, when a session of the Seimas takes place, a member of the Seimas cannot be on annual paid leave, save the exceptions described below concerning the time of the annual paid leave of the Speaker of the Seimas and the Deputy Speaker (Deputy Speakers) of the Seimas.

When establishing, by means of a law, the duration of the annual paid leave of the members of the Seimas, as well as its beginning and end (by means of a resolution of the Seimas), it is necessary to take into account that, as mentioned before, the sittings of the committees of the Seimas and other structural subunits in which members of the Seimas must participate are convened not only during the sessions of the Seimas, but also at the time when there are no sessions of the Seimas, as well as that, between the sessions of the Seimas the Seimas, its committees and other structural subunits, individual members of the Seimas and their groups also carry out other activities established in the Constitution, the Statute of the Seimas, and laws. Thus, a member of the Seimas cannot be on annual paid leave at the time when sittings of the committees of the Seimas and other structural subunits (in which the members of the Seimas must participate) take place, and when the activities of the Seimas, its committees, and other structural subunits established in the Constitution, the Statute of the Seimas, and laws are carried out, even though the session of the Seimas does not take place, save the exceptions described below concerning the annual paid leave of the Speaker of the Seimas and the Deputy Speaker (Deputy Speakers) of the Seimas.

The constitutional imperatives of the continuity of the activity of the Seimas and the continuity of the activity of a member of the Seimas and the necessity to ensure the right of a member of the Seimas to annual paid leave established in Paragraph 1 of Article 49 of the Constitution, when these constitutional requirements are interpreted in the context of one another, imply that the legislature, while regulating the relationships linked with the annual paid leave of a member of the Seimas, can and must determine the time when the sittings of the Seimas, as well as the sittings of the committees of the Seimas and other structural subunits, do not take place and when no other activity of the Seimas, the committees of the Seimas, or other structural subdivisions established in the Constitution, the Statute of the Seimas, and laws is carried out. The annual paid leave of the members of the Seimas can be established at that particular time by means of a resolution of the Seimas. According to the Constitution, the annual paid leave of a member of the Seimas cannot be established at any other time, save the further described exceptions established in the Constitution

concerning the time of the annual paid leave of the Speaker of the Seimas and the Deputy Speaker (Deputy Speakers) of the Seimas.

The nature, constitutional mission of the Seimas as the representation of the Nation and the institution of legislative power, the particularities of the functioning and organisation of the work of the Seimas and the legal constitutional status of a member of the Seimas as a representative of the Nation and a professional politician determine the fact that all the members of the Seimas must take annual paid leave at the same time.

At the same time, it should be noted that, as mentioned before, certain exceptions are established in the Constitution concerning the time of the annual paid leave of the Speaker of the Seimas and the Deputy Speaker (Deputy Speakers) of the Seimas. The time of the annual paid leave of the state officials mentioned in the Constitution – the Speaker of the Seimas and the Deputy Speaker (Deputy Speakers) of the Seimas – must be established by taking into consideration the fact that these officials must be able, if necessary, to immediately perform their duties under the Constitution, laws, and the Statute of the Seimas. The possibility of establishing a differentiated legal regulation of the time for the annual paid leave of the Speaker of the Seimas and the Deputy Speaker (Deputy Speakers) of the Seimas (compared with the legal regulation of the time for the annual paid leave of other members of the Seimas) is the only exception to the regulation of the aforementioned relationships established in the Constitution. Nevertheless, while establishing a different time for the annual paid leave for the Speaker of the Seimas and the Deputy Speaker (Deputy Speakers) of the Seimas, it is necessary to ensure that these officials would be able to perform their duties in such a way that would not interrupt the work of the Seimas, *inter alia*, the fact that the Speaker of the Seimas would be able to perform the duties (laid down in Paragraph 2 of Article 70 of the Constitution) of promulgating legal acts (Statute of the Seimas or other substatutory acts of the Seimas).

The Seimas has discretion to establish the duration of the annual paid leave of a member of the Seimas. At the same time, it should be stressed that, when establishing this duration, the Seimas is bound by the constitutional imperative of an open, just and harmonious civil society and the constitutional principle of the equality of the rights of all persons, which does not allow granting privileges to any group of people or discriminating them, *inter alia*, on the basis of their social status. Therefore, the annual paid leave of a member of the Seimas cannot be shorter than the minimal duration of leave established in laws; however, such leave may not be unreasonably long; all differences (compared with the duration of the holidays of other working people) in the annual paid leave of a member of the Seimas, no matter what such differences are, must be constitutionally justifiable.

… the Constitution establishes the possibility of convening extraordinary sessions of the Seimas … if necessary, the Seimas can decide to prolong a regular session. If a decision is made to prolong a regular session or an extraordinary session is convened, the members of the Seimas must convene to it even though they are on annual paid leave at that time. In such cases, the Seimas, ensuring the right of a member of the Seimas to annual paid leave (this right is provided for in Paragraph 1 of the Article 49 of the Constitution), can and should determine a different time when the sittings of the Seimas, as well as the sittings of the committees of the Seimas and other structural subunits, do not take place, the activity of the Seimas, its committees, and other structural subunits established in the Constitution, the Statute of the Seimas and laws is not carried out, in order that the members of the Seimas could exercise their constitutional right to annual paid leave instead of the time that was used by the members of the Seimas for a prolonged regular session of the Seimas or for an extraordinary session of the Seimas.

It should be noted that, according to the Constitution, such a legal situation where, after the leave of the members of the Seimas is over, the committees and other structural subunits of the Seimas do not function and the time remaining until the beginning of the next session of the Seimas is treated as that equal to the leave of the members of the Seimas or to their other leisure time is impermissible.

[…]

In summary, it should be held that, after establishing the duration and other conditions of the annual paid leave of a member of the Seimas, the right of a member of the Seimas to annual paid leave, as consolidated in Paragraph 1 of the Article 49 of the Constitution, would be ensured. On the other hand, as it

was held in [the Constitutional Court's ruling of 1 July 2004], the consolidation of the leave of the members of the Seimas, by means of a law, would also ensure that no preconditions would be created for the constitutionally unfounded treatment of the period between the sessions of the Seimas as a period equivalent to the leave of the members of the Seimas or to any other type of their rest.

In the light of the foregoing arguments, it should be held that the notion "continuity of the activity of the Seimas" used in [the Constitutional Court's ruling of 1 July 2004] does not mean that the continuity of the work of the Seimas would be violated if the paid annual leave provided for in Paragraph 1 of the Article 49 of the Constitution was granted to all the members of the Seimas during the period between the sessions of the Seimas, save the exceptions, which arise out of the Constitution, concerning the time for the annual paid leave of the Speaker of the Seimas and the Deputy Speaker (Deputy Speakers) of the Seimas.

The prohibition precluding a member of the Seimas from engaging in business, commerce, or other profit-making activity (Paragraphs 1 and 3 of Article 60 of the Constitution): the right of a member of the Seimas to possess and manage property owned by him/her, to conclude the related contracts, and to engage in farming

The Constitutional Court's decision of 10 February 2005

The prohibition, established in Paragraph 1 of Article 60 of the Constitution, precluding a member of the Seimas from taking any other office in state establishments or organisations and from having another occupation in business, commerce and other private establishments or enterprises, as well as the prohibition, established in Paragraph 3 of the same article, precluding a member of the Seimas from receiving any other remuneration except for the remuneration of a member of the Seimas and remuneration for creative activities … does not mean that a member of the Seimas cannot use, manage, etc. property owned by him/her, as well as conclude related contracts. However, the activity of a member of the Seimas where he/she uses his property, receives income from such property, possesses property owned by him/her, etc., as well as concludes related contracts, according to the Constitution, may not take the form of business, commerce, or other profit-making private activity …

At the same time, it should be noted that the management of property owned by persons and other related activities can bear particularities that are determined by various factors – the nature of this property, the circumstances of its acquisition, the fact whether other persons have any rights to such property, etc. It is these various factors that may determine whether the use, management, etc. of property owned by a person, receiving income from such activity, as well as concluding related contracts, in some cases take the form of a business, commerce, or other profit-making activity, and in other cases they do not. Within the context of the issue under consideration, it should also be noted that the activity that is described as farming is usually linked with the use, management, etc. of land, forests, water bodies as well as objects of living nature as objects of property; therefore, this activity has specific particularities.

[…]

… while evaluating if a certain activity of a member of the Seimas, related to using, managing, etc. property owned by a member of the Seimas, receiving income from it, as well as concluding related contracts, is compatible or incompatible with the constitutional legal status of a member of the Seimas, from the viewpoint of the Constitution it is not only important how a particular activity is defined in laws or other legal acts, but, first of all, it is important whether the activity actually performed by a member of the Seimas is an occupation prohibited for a member of the Seimas under the Constitution, and whether such activity takes the form of business, commerce, or other activity, which is prohibited by the Constitution.

Taking into consideration the fact that the activity defined as farming can be distinguished by certain particularities, the fact alone that profit is received from such activity does not mean that this activity takes the form of business, commerce, or other activity, which is prohibited by the Constitution. According to the Constitution, the legislature has the duty to establish such a legal regulation that would make it possible, in each case when doubts arise whether a certain activity described as farming (regardless of how it is defined in laws or other legal acts) undertaken by a member of the Seimas has taken the form of business, commerce,

or other activity prohibited for a member of the Seimas under the Constitution, to ascertain all factual circumstances, evaluate the said activity, and determine whether the aforementioned activity is compatible with the legal constitutional status of a member of the Seimas.

In the light of the foregoing arguments, it should be held that the statement "the notion 'work' used in the phrase 'work in business, commercial, or other private establishments or enterprises' of Paragraph 1 of Article 60 of the Constitution also comprises any other private profit-making activity, as well as any profit-making activity engaged in without establishing an enterprise, establishment, or organisation" … of [the Constitutional Court's ruling of 1 July 2004] does not mean that any activity that can be described as farming is incompatible as such with the constitutional legal status of a member of the Seimas (if such activity has not taken the form of business, commerce, or any other activity prohibited for a member of the Seimas under the Constitution).

The prohibition precluding a member of the Seimas from engaging in business, commerce, or other profit-making activity (Paragraph 1 of Article 60 of the Constitution): the right of a member of the Seimas to be a founder, owner, co-owner, or shareholder of a private enterprise, establishment, or organisation

The Constitutional Court's decision of 10 February 2005

… none of the statements [of the Constitutional Court's ruling of 1 July 2004, the interpretation of which is requested] indicates that a member of the Seimas is prohibited from being a founder, owner, co-owner, or shareholder of any private enterprise, establishment, or organisation, that such a member of the Seimas, according to the Constitution, cannot have the rights of a founder, owner, co-owner, or shareholder of a private enterprise, establishment, or organisation, that he/she cannot exercise these rights by himself/herself, except for the prohibition imposed on a member of the Seimas and formulated in one of these statements: "such a member of the Seimas who is a founder, owner, co-owner, or shareholder of a private enterprise, establishment, or organisation may not take a position, perform work, hold a position, fulfil other functions, perform other tasks, hold the so-called honorary position, etc. (including participation in collegial management, control, and other bodies) in the said establishment, enterprise, or organisation, or represent it" …

On the other hand, the aforementioned statements do not deny the duty, deriving from the Constitution, of the legislature to establish effective control over the incompatibility of the duties of a member of the Seimas with other duties or work, as well as the prohibition on receiving other remuneration, save the exceptions established in the Constitution. The Seimas has a certain degree of discretion in establishing such control; the incompatibility of the duties of a member of the Seimas with other duties and work, as well as receiving no other remuneration, save the exceptions established in the Constitution, can be ensured by the Seimas, *inter alia*, by establishing also such a legal regulation by which other persons would be entrusted with the management of the property of a member of the Seimas (after establishing the legal guarantees of the protection and preservation of such property), and by which the transactions of the enterprises of which a member of the Seimas is a founder, owner, co-owner, or shareholder with the establishments, enterprises, organisations, etc. of the public sector would be under control.

In the light of the foregoing arguments, it should be held that the statements … [of the Constitutional Court's ruling of 1 July 2004] do not mean that a member of the Seimas is prohibited from being a founder, owner, co-owner, or shareholder of any enterprise, establishment, or organisation, that such a member of the Seimas, according to the Constitution, cannot have the rights of a founder, owner, co-owner, or shareholder of a private enterprise, establishment, or organisation, that he/she cannot exercise the rights himself/herself, except for the fact that such a member of the Seimas who is a founder, owner, co-owner, or shareholder of a private enterprise, establishment, or organisation may not take a position, perform work, hold a position, fulfil other functions, perform other tasks, hold the so-called honorary position, etc. (including participation in collegial management, control, and other bodies) in that enterprise, establishment, or organisation or represent it.

The right of a member of the Seimas to take a position in the political party of which he/she is a member (Paragraphs 1 and 3 of Article 60 of the Constitution)

The Constitutional Court's decision of 10 February 2005

… political parties belong to such a type of associations, the aim and purpose of the establishment and activity of which are inseparable from seeking political power, thus, as well as from participating in elections to the representative institution, the Seimas.

The Constitution does not forbid a member of the Seimas from holding various positions (*inter alia*, leading ones) in a political party of which he/she is a member and representing it.

… Paragraph 1 of Article 60 of the Constitution establishes the prohibition precluding a member of the Seimas from taking any other office in state establishments or organisations, also from having another occupation in business, commercial and other private establishments and enterprises, and Paragraph 3 of the same article establishes the prohibition precluding a member of the Seimas from receiving any other remuneration except for the remuneration of a member of the Seimas and remuneration for creative activities.

In this context, it should be noted that, according to the Constitution, a member of the Seimas holding a certain position (*inter alia*, a leading one) in a political party of which he/she is a member cannot be linked with the political party and its structural subdivisions by employment relationships regardless of whether this activity is registered by any legal contract or other legal act, or performed without any legal contract or legal act, and whether this activity is remunerated in any payment or other form or not.

It should also be noted that, under the Constitution, the constitutional prohibition precluding a member of the Seimas from receiving any other remuneration except the remuneration of a member of the Seimas and remuneration for creative activities means that a member of the Seimas who holds a certain position (*inter alia*, a leading one) in the political party of which he/she is a member cannot receive any remuneration for such activity.

In this context, it should be held that … the content of the notion "remuneration" used in Paragraph 3 of Article 60 of the Constitution is a constitutional notion, it bears constitutional content and it should not be associated exclusively with remuneration paid by employment etc. contracts or agreements; the content of the notion "remuneration" in Paragraph 3 of Article 60 is much broader: this notion comprises monetary payments of various types and the provision of other material benefit to a member of the Seimas.

In the light of the foregoing arguments, it should be held that the statements ["The constitutional right to freely form unions is linked with the possibility of holding various positions in such unions; the said possibility is a derivative from the constitutional right to freely form unions. The procedure of holding such positions in associations is established not by the state, but in acts regulating the internal order (articles of association, statutes, etc.) of an association itself (which, according to the Constitution, is autonomous with regard to public authority …)" and "Under the Constitution, no legal regulation artificially or unreasonably restricting freedom of forming associations and their activity may be established, as the establishment of such a legal regulation would violate the constitutional value – the right to associate (freedom of association). Therefore, under the Constitution, the legislature may not establish any such a legal regulation that would limit the right of a member of the Seimas to be a member of the association specified in the Constitution and to take a position in such an association as, in respect of the said person, this would violate the constitutional value – the right to associate or freedom of association"] of [the Constitutional Court's ruling of 1 July 2004], as such, do not mean that a member of the Seimas cannot hold a position (*inter alia*, a leading one) in the political party of which he/she is a member and represent such a party.

The right of a member of the Seimas to take office in the trade union or other association of which he/she is a member (Paragraphs 1 and 3 of Article 60 of the Constitution)

The Constitutional Court's decision of 10 February 2005

… it should be noted that freedom of associations as well as freedom of establishment and activity of trade unions, as consolidated in the Constitution, imply that all such associations can, while following laws,

independently regulate their organisational structure, various positions (*inter alia*, leading ones), also the procedure of filling such positions.

The Constitution does not forbid a member of the Seimas from holding various positions (*inter alia*, leading ones) in a trade union or another association of which he/she is a member and which he/she represents.

It should also be stressed that the prohibition established in Paragraph 1 of Article 60 of the Constitution precluding a member of the Seimas from holding any other position in state establishments or organisations, as well as working in business, commercial or other private establishments or enterprises and the prohibition established in Paragraph 3 of the same article precluding a member of the Seimas from receiving any other remuneration, with the exception of the remuneration as a member of the Seimas and remuneration for creative activities imply that a member of the Seimas who holds a certain position (*inter alia*, a leading one) in a trade union or another association of which he/she is a member, according to the Constitution, may not have an employment relationship with such a trade union, another association, or its structural subdivisions regardless of whether this activity is registered by any legal contract or other legal act, or performed without any legal contract or legal act, regardless of whether or not this activity is remunerated in any payment or other form; in addition, under the Constitution, a member of the Seimas who holds a certain position (*inter alia*, a leading one) in the trade union or another association of which he/she is a member cannot receive any remuneration for such activity.

When interpreting whether a member of the Seimas can represent a trade union or another association of which he/she is a member, it should also be noted that the representation of a trade union or another association by a member of the Seimas bears certain particularities determined by the constitutional legal status of a member of the Seimas as a representative of the Nation; such a legal status differs substantially from the legal status of other citizens or state officials. According to the Constitution, a member of the Seimas cannot represent a trade union or another association in legal relationships with state and municipal establishments, enterprises, or organisations (their officials), as well as with other (non-state or municipal) establishments, enterprises, or organisations (their officials), where laws assign (entrust) such establishments, enterprises, or organisations with the implementation of certain state functions, or where such establishments, enterprises, or organisations, in certain ways and forms established in laws, participate in the implementation of state functions, since the aforementioned establishments, enterprises, or organisations (their officials) are (might be) directly or indirectly dependent on decisions made by the Seimas (including decisions on the allocation of budget appropriations), on parliamentary control exercised by the Seimas, on the possibility for the Seimas to appoint and release the heads of institutions, as well as other state officials, or on the possibility for the Seimas to exert influence on their appointment, etc. Such representation where a certain trade union or another association is represented by a member of the Seimas in legal relationships with state and municipal establishments, enterprises, or organisations (their officials), as well as with other (non-state or municipal) establishments, enterprises, or organisations (their officials), where laws assign (entrust) such establishments, enterprises, or organisations with the implementation of certain state functions, or where such establishments, enterprises, or organisations, in certain ways and forms established in laws, participate in the implementation of state functions, may create the preconditions for such a legal situation where a trade union or another association represented by a member of the Seimas would gain an additional advantage over another subject of these relationships solely due to the fact that such a trade union or another association is represented by a member of the Seimas.

In the light of the foregoing arguments, it should be held that the statements [“The constitutional right to freely form unions is linked with the possibility of holding various positions in such unions; the said possibility is a derivative from the constitutional right to freely form unions. The procedure of holding such positions in associations is established not by the state, but in acts regulating the internal order (articles of association, statutes, etc.) of an association itself (which, according to the Constitution, is autonomous in respect of public authority …)” and “Under the Constitution, no legal regulation artificially or unreasonably restricting freedom of forming associations and their activity may be established, as the establishment of

such a legal regulation would violate the constitutional value – the right to associate (freedom of association). Therefore, under the Constitution, the legislature may not establish any such a legal regulation that would limit the right of a member of the Seimas to be a member of the association specified in the Constitution and to take a position in such an association as, in respect of the said person, this would violate the constitutional value – the right to associate or freedom of association"] of [the Constitutional Court's ruling of 1 July 2004], as such, do not mean that a member of the Seimas cannot hold a position (*inter alia*, a leading one) in the trade union or other association of which he/she is a member and represent such a trade union or another association.

The incompatibility of the duties of a member of the Seimas with other duties or work (Paragraph 1 of Article 60 of the Constitution): the prohibition on having an employment relationship with any enterprise, organisation, public organisation, trade union, political party, association, or other union

The Constitutional Court's decision of 10 February 2005

… the Constitution prohibits such legal situations where a member of the Seimas has an employment relationship with a certain state or municipal enterprise, establishment, or organisation, or in a private enterprise, establishment, or organisation, or with a certain public organisation, trade union, political party, association, or other union (regardless of its title), with the exception of the work (duties) *expressis verbis* indicated or implicitly provided for in the Constitution.

This constitutional prohibition also means that a person elected as a member of the Seimas must terminate his/her employment relationship with all state or municipal enterprises, establishments, organisations, or with private enterprises, establishments, organisations, or with public organisations, trade unions, political parties, associations, or other unions (regardless of their titles) before the first sitting of the newly elected Seimas during which he/she takes an oath. It was held in [the Constitutional Court's ruling of 1 July 2004] that such "interpretation of the Constitution, whereby, purportedly, a member of the Seimas, having taken an oath, for a certain period of time, may still hold another office or perform other work that is incompatible with the duties of a member of the Seimas (save the exceptions provided for in the Constitution) … would be unfounded, as the prohibitions established in the Constitution applicable to a member of the Seimas … would be disregarded; this would be in violation of the Constitution" ….

Thus, if a member of the Seimas, having taken an oath, did not terminate his/her employment relationship with a certain state or municipal enterprise, establishment, organisation, or with a private enterprise, establishment, organisation, or with a public organisation, trade union, political party, association, or another union (regardless of its title) for some time, this would constitute failure to pay regard to the constitutional prohibitions for a member of the Seimas, i.e. this would mean a violation of the Constitution. The Constitution would also be violated in cases where a member of the Seimas, having taken an oath, did not terminate his/her employment relationship with a certain state or municipal enterprise, establishment, or organisation, or with a private enterprise, establishment, or organisation, or with a public organisation, trade union, political party, association, or another union (regardless of its title), but by the decision of such a state or municipal enterprise, establishment, or organisation, or a private enterprise, establishment, or organisation, or a public organisation, trade union, political party, association, or another union (regardless of its title), or their institution or official, such a member of the Seimas would be granted leave or in any other way he/she would be allowed, on a temporary basis (as long as he/she holds the office of a member of the Seimas), not to perform the respective work, or the exercise of his/her powers (duties) would be suspended, etc. In this context, it should be noted that the fact that a person takes leave, the exercise of his/her powers (duties) is suspended, etc., does not terminate his/her employment relationship with a particular state or municipal enterprise, establishment, or organisation, or a private enterprise, establishment, or organisation, or a public organisation, trade union, political party, association, or another union (regardless of its title), but, on the contrary, confirms that this person has (continues to have) an employment relationship with a particular state or municipal enterprise, establishment, or organisation, a private enterprise,

establishment, or organisation, or a public organisation, trade union, political party, association, or another union (regardless of its title).

According to Item 7 of Article 63 of the Constitution, the powers of a member of the Seimas cease when he/she does not give up employment that is incompatible with the duties of a member of the Seimas. If it becomes clear that such a legal situation occurred where a member of the Seimas, having taken an oath, has not resigned from such employment that is incompatible with the duties of a member of the Seimas, under the Constitution, a duty arises for the Seimas to terminate the powers of such a member of the Seimas; the Seimas must adopt a corresponding resolution thereon.

In the light of the foregoing arguments, it should be held that the statements of … [the Constitutional Court's ruling of 1 July 2004] on the incompatibility of the duties of a member of the Seimas with other duties and work mean that the Constitution does not allow such a legal situation where a member of the Seimas is a person who has not terminated his/her employment relationship with a certain state or municipal enterprise, establishment, or organisation, or with a private enterprise, establishment, organisation, or with a certain public organisation, trade union, political party, association, or another union (regardless of its title), but takes leave or in any other way is allowed, on a temporary basis (as long as he/she holds the office of a member of the Seimas), not to perform particular work, not to carry out particular activities, or the exercise of his/her powers (duties) is suspended otherwise in such an enterprise, establishment, or organisation, or in such a public organisation, trade union, political party, association, or another union (regardless of its title).

The prohibition precluding a member of the Seimas from receiving other remuneration (Paragraph 3 of Article 60 of the Constitution)

The Constitutional Court's decision of 10 February 2005

… under the Constitution, the constitutional prohibition precluding a member of the Seimas from receiving any other remuneration except the remuneration of a member of the Seimas and remuneration for creative activities means that a member of the Seimas who holds a certain position (*inter alia*, a leading one) in the political party of which he/she is a member cannot receive any remuneration for such activity.

In this context, it should be held that … the content of the notion "remuneration" used in Paragraph 3 of Article 60 of the Constitution is a constitutional notion, it bears constitutional content and it should not be associated exclusively with remuneration paid by employment etc. contracts or agreements; the content of the notion "remuneration" in Paragraph 3 of Article 60 is much broader: this notion comprises monetary payments of various types and the provision of other material benefit to a member of the Seimas.

The individuality of the mandate of a member of the Seimas

The Constitutional Court's conclusion of 27 October 2010

… under the Constitution, the mandate of a member of the Seimas is individual, i.e. it is conferred only on a person who, under the procedure established in the Constitution and laws, is elected as a member of the Seimas. Under the Constitution, a member of the Seimas has the right and duty to implement the mandate conferred on him/her by the electorate only by himself/herself in person. The constitutional status of a member of the Seimas, which integrates the duties, rights, the guarantees of the activity, and the responsibility of a member of the Seimas, implies that a member of the Seimas is obliged to implement the rights and duties of a member of the Seimas, a representative of the Nation, which arise from the Constitution and laws not in conflict with the Constitution, only by himself in person, and that he/she may not, in any form, transfer to another person, *inter alia*, a member of the Seimas, the performance of his/her, as a member of the Seimas, rights and constitutional duties. The individuality of the mandate of a member of the Seimas also implies that no person, *inter alia*, a member of the Seimas, may take over the rights and duties of another member of the Seimas, a representative of the Nation, *inter alia*, the right to vote.

The principle of the free mandate of a member of the Seimas, which is consolidated in the Constitution, *inter alia*, the requirement for the individuality of the mandate of a member of the Seimas, gives rise to the right of a member of the Seimas to vote at his/her own discretion in the course of the adoption of any decision of the Seimas; the said right may be realised only by the expression of the will of a member of the Seimas in person in the course of voting at a sitting of the Seimas. In cases where the requirement for voting by a member of the Seimas in person at a sitting of the Seimas is not observed, *inter alia*, where, in the course of voting, a certain member of the Seimas votes instead of another member of the Seimas and thereby expresses the will of not that member of the Seimas instead of whom a vote is cast, but his/her own, no regard is paid to the requirements for the procedure of the adoption of laws, which stem from the Constitution, *inter alia*, Article 69 thereof, the results of the voting are distorted, as well as the preconditions are created for the violation of the principle of the free mandate of a member of the Seimas, which is consolidated in the Constitution. It also needs to be noted that such cases where a certain member of the Seimas votes instead of another member of the Seimas and thereby expresses the will of that member of the Seimas also do not conform to the requirement for the individuality of the mandate of a member of the Seimas and should be treated as disregard of the requirements for the procedure of the adoption of laws, which stem from the Constitution, *inter alia*, Article 69 thereof.

Under the Constitution, the legislature has the duty to establish, by means of legal acts, such a legal regulation that would ensure that the members of the Seimas who take part in the implementation of the functions of the Seimas, as the representation of the Nation, would properly perform their powers, that no legal preconditions would be created for the members of the Seimas to act not in the interests of the Nation and the State of Lithuania, but in their personal interests, by raising these personal interests above the public interests, that no legal preconditions would be created for the members of the Seimas to act in bad faith and abuse their powers, that would make it possible to exercise effective control over how members of the Seimas observe these requirements, and that the members of the Seimas, in cases where they disregard the aforementioned requirements, would be held liable in accordance with the Constitution and laws.

The constitutional concept of the duties and work that are incompatible with the duties of a member of the Seimas (Paragraph 1 of Article 60 of the Constitution)

The Constitutional Court's decision of 23 February 2011

While interpreting whether the phrase "the notion 'work' used in the expression 'work in business, commercial, or other private establishments or enterprises' of Paragraph 1 of Article 60 of the Constitution" … of the Constitutional Court's ruling of 1 July 2004 … also comprises any private activity of a member of the Seimas that is carried out in business, commercial and other private establishments or enterprises under a legal contract or any other type of contract, though, in the time free from sittings of the Seimas and without receiving, for that activity, any remuneration or any other types of monetary payments, it needs to be noted that … under the official constitutional doctrine formulated in the Constitutional Court's ruling of 1 July 2004, the notion "work" used in the expression "work in business, commercial, or other private establishments or enterprises" of Paragraph 1 of Article 60 of the Constitution comprises any activity in a Lithuanian, foreign, or international private establishment, enterprise, or organisation, or the representation of such an establishment, enterprise, or organisation if the said activity is linked with performing work, taking a position, holding a position, fulfilling other functions, performing other tasks, holding the so-called honorary position, etc. (including participation in collegial management, control, and other bodies), irrespective of whether:

– this activity is permanent, temporary, or one-off (episodic);

– this activity is remunerated in any payment or other form, or is not remunerated;

– this activity is referred to in legal acts as work or otherwise;

– there are any other persons engaged in a certain activity in this establishment, enterprise, or organisation;

– this activity means that it is carried out by a person holding a leading position;

– a person is elected or appointed in order to carry out such activity;

– the activity is registered under a certain legal contract or another legal act, or is performed without any legal contract or legal act.

It also needs to be noted that, as it was emphasised in the Constitutional Court's decision of 10 February 2005, under the Constitution, during a rest period, at leisure time, or during annual paid leave a member of the Seimas does not lose his/her status of a representative of the Nation.

Thus, it should be held that Paragraph 1 of Article 60 of the Constitution contains the prohibition precluding a member of the Seimas from working in business, commercial, or other private establishments or enterprises not only during his/her work at the Seimas or his/her other parliamentary activities, but also during the time free form work at the Seimas (during a rest period, at leisure time, or during annual paid leave).

At the same time, it needs to be emphasised that … the purpose of the legal regulation established in Paragraph 1 of Article 60 of the Constitution is to ensure the free mandate of a member of the Seimas as a representative of the Nation, the continuity of his/her work at the Seimas and his/her other parliamentary activities, to guarantee that a member of the Seimas acts in the interests of the Nation and the State of Lithuania, but not in his/her personal or group interests, or in the interests of the political parties or political organisation, the public or other organisations, other persons, or the territorial communities that nominated or supported the said person as a candidate for the office of a member of the Seimas, or in the interests of the voters of the constituency in which the said member of the Seimas was elected, that a member of the Seimas will not use his/her status and a free mandate for his/her private benefit, or for the benefit of his/her close relatives or other persons, that each member of the Seimas will have the opportunity to perform his/her constitutional duty to continuously participate at the work of the Seimas, the representation of the Nation, to continuously exercise as a representative of the Nation his/her constitutional powers; this purpose would never be reached or the preconditions precluding the accomplishment of this purpose would be created if a member of the Seimas also had the possibility of holding another office or another occupation, with the exception of the office *expressis verbis* specified in the Constitution or the duties allowed under the Constitution.

In view of the foregoing arguments, the conclusion should be drawn that the phrase "the notion 'work' used in the expression 'work in business, commercial, or other private establishments or enterprises' of Paragraph 1 of Article 60 of the Constitution" … of the Constitutional Court's ruling of 1 July 2004 comprises any activity in a Lithuanian, foreign, or international private establishment, enterprise, or organisation, or the representation of such an establishment, enterprise, or organisation if the said activity is linked with performing work, taking a position, holding a position, fulfilling other functions, performing other tasks, holding the so-called honorary position, etc. (including participation in collegial management, control, and other bodies), irrespective of whether this activity is permanent, temporary, or one-off (episodic), whether this activity is remunerated in any payment or other form, or is not remunerated, whether this activity is referred to in legal acts as work or otherwise, whether there are any other persons engaged in a certain activity in this establishment, enterprise, or organisation, whether this activity means that it is carried out by a person holding a leading position, whether a person is elected or appointed in order to carry out such activity, whether the activity is registered under a certain legal contract or another legal act, or is performed without any legal contract or legal act, irrespective of the fact whether this activity is carried out during the work of a member of the Seimas at the Seimas or his/her other parliamentary activities, or during a rest period, at leisure time, or during annual paid leave.

The right of a member of the Seimas to receive remuneration for creative activities (Paragraph 3 of Article 60 of the Constitution)

The Constitutional Court's decision of 23 February 2011

… the expression "one of specific features of freedom of the creative activities of a member of the Seimas is that a member of the Seimas exercises this freedom not in the capacity of a subject of employment, state service, or similar relations" … of the Constitutional Court's ruling of 1 July 2004, when interpreted in the context of the constitutional legal status of a member of the Seimas, the constitutional concept of creative activities as well as remunerating for such activities, means that, under the Constitution, a member of the Seimas may receive remuneration for creative activities, i.e. for such activities that result in qualitatively new, original and specific material or spiritual values of science, technology, culture, or art (piece of creation), which have never existed before. In addition, the creative activities of a member of the Seimas are incompatible with any activity (taking a position, performing work, holding a position, fulfilling other functions, etc.) in a Lithuanian state or municipal, foreign, or international establishment, enterprise, or organisation, or in a private establishment, enterprise, or organisation; thus, a member of the Seimas, while engaging in creative activities, may not violate the constitutional imperatives of limitations imposed on work activities of a member of the Seimas, which arise from the Constitution, *inter alia*, Paragraph 1 of Article 60 thereof.

Constitutional freedom of the creative activities of a member of the Seimas may be exercised, *inter alia*, by concluding a contract; however, it needs to be noted that no employment relationship, state service relationship, or similar relationship may arise on the basis of such a contract. It also needs to be noted that, when deciding on the type of relationships that have emerged between the contracting parties under a specific contract, not only the title of a contract, but also the content thereof must be assessed. Consequently, in each case it is necessary to individually assess whether such a contract is used to regulate the relationships corresponding to the constitutional concept of creative activities.

Thus, it needs to be held that a member of the Seimas may receive remuneration for creative activities, i.e. for such activities that result in qualitatively new, original and specific material or spiritual values of science, technology, culture, or art (piece of creation), which have never existed before; however, as mentioned before, the creative activities of a member of the Seimas are incompatible with any activity (taking a position, performing work, holding a position, fulfilling other functions, etc.) in a Lithuanian state or municipal, foreign, or international establishment, enterprise, or organisation, or in a private establishment, enterprise, or organisation; thus, a member of the Seimas, while engaging in creative activities, may not violate the constitutional imperatives of limitations imposed on work activities of a member of the Seimas, which arise from the Constitution, *inter alia*, Paragraph 1 of Article 60 thereof.

At the same time, it needs to be noted that, as mentioned before, a member of the Seimas, while exercising his/her freedom of creative activities, must pay regard to the constitutional status of a member of the Seimas as a representative of the Nation, and the legal and ethical imperatives arising therefrom, *inter alia*, he/she must avoid a conflict between public and private interests.

In view of the foregoing arguments, the conclusion should be drawn that the expression "one of specific features of freedom of the creative activities of a member of the Seimas is that a member of the Seimas exercises this freedom not in the capacity of a subject of employment, state service, or similar relationships" … of the Constitutional Court's ruling of 1 July 2004 means, *inter alia*, that a member of the Seimas may receive remuneration for creative activities, i.e. for such activities that result in qualitatively new, original and specific material or spiritual values of science, technology, culture, or art (piece of creation), which have never existed before; constitutional freedom of the creative activities of a member of the Seimas may be exercised, *inter alia*, by concluding a contract; however, no employment relationship, state service relationship, or similar relationship may arise on the basis of such a contract. Consequently, a member of the Seimas, while engaging in creative activities, may not violate the constitutional imperatives

of limitations imposed on work activities of a member of the Seimas, which arise from the Constitution, *inter alia*, Paragraph 1 of Article 60 thereof.

[…]

… a lecture, as a rule, is a form of educational activities. Lectures are aimed at imparting knowledge on the subject taught as well as at elucidating topical questions relating to that subject. Nevertheless, situations are possible where a lecture, due to its notable originality and qualitative novelty, has no analogues anywhere and may be treated as a piece of creation, the form of expression whereof, *inter alia*, can be written or verbal one.

Under the Constitution, a member of the Seimas may receive remuneration for creative activities, i.e. for such activities in the area of science, technology, culture, or art that are aimed at creating a particular piece of creation, i.e. qualitatively new, original and specific material or spiritual values of science, technology, culture, or art, which have never existed before. It needs to be noted that, as mentioned before, one of the specific features of freedom of the creative activities of a member of the Seimas is that a member of the Seimas exercises this freedom not as a subject of employment, state service, or similar relationships.

Thus, it needs to be held that a member of the Seimas may receive remuneration for a lecture corresponding to the concept of a piece of creation in cases where, in the course of the exercise of his/her freedom of creative activities, a member of the Seimas has created a piece of creation while not being in the position of a subject of employment, state service, or similar relationships.

It has been mentioned that constitutional freedom of the creative activities of a member of the Seimas may be exercised, *inter alia*, by concluding a contract; however, no employment relationship, state service relationship, or similar relationship may arise on the basis of such a contract. It needs to be noted that a contract may also be concluded in connection with the creative activities of a member of the Seimas that are aimed at creating a lecture; however, no employment relationship, state service relationship, or similar relationship may arise on the basis of such a contract. It also needs to be noted that, when deciding on the type of relationships that have emerged between the contracting parties under a specific contract, not only the title of a contract, but also the content thereof must be assessed. Consequently, in each case it is necessary to individually assess whether such a contract is used to regulate the relationships corresponding to the constitutional concept of creative activities.

In view of the foregoing arguments, the conclusion should be drawn that the statements "It is clear from the phrase 'payment for educational or creative activities' in Paragraph 1 of Article 113 of the Constitution that the constitutional concepts of educational and creative activities are not identical and that each of them has its own independent content. These concepts may not be identified with one another, they are not synonyms, and none of them covers the other. Educational activities in the Constitution are separated from creative activities: educational activities are linked with education, teaching, and training at educational and teaching establishments (including higher schools), whereas creative activities … are activities aimed at creating a piece of science, technology, culture, or art" … of the Constitutional Court's ruling of 1 July 2004 mean, *inter alia*, that a member of the Seimas may receive remuneration for a lecture corresponding to the concept of a piece of creation, which has been created while exercising constitutional freedom of creative activities of a member of the Seimas; as regards a lecture corresponding to the concept of a piece of creation, the form of expression whereof, *inter alia*, can be written or verbal one, it is possible to conclude a contract; however, no employment relationship, state service relationship, or similar relationship may arise on the basis of such a contract.

The cessation of the powers of a member of the Seimas when he/she takes up or does not give up employment that is incompatible with the duties of a member of the Seimas (Item 7 of Article 63 of the Constitution)

The Constitutional Court's decision of 23 February 2011

… Item 7 of Article 63 of the Constitution provides for an independent ground for the loss of the mandate by a member of the Seimas – where a member of the Seimas takes up or does not give up

employment that is incompatible with the duties of a member of the Seimas; this implies the necessity to carry out an investigation into the activities of such a member of the Seimas in order to verify the respective circumstances and to establish the fact that the said member of the Seimas has taken up or has not given up the employment incompatible with the duties of a member of the Seimas. Therefore, the legislature must establish such a procedure that would ensure the due process of law, would make it possible to properly investigate and establish whether a certain member of the Seimas has taken (or has not taken) up or has given (or has not given) up the employment incompatible with the duties of a member of the Seimas, and would make it possible to take a fair decision as regards the mandate of the said member of the Seimas.

In view of the foregoing arguments, the conclusion should be drawn that the phrase "According to Item 7 of Article 63 of the Constitution, the powers of a member of the Seimas cease when he/she does not give up employment that is incompatible with the duties of a member of the Seimas" of … the Constitutional Court's ruling of 1 July 2004, when interpreted in conjunction with the phrase "The incompatibility of the duties of a member of the Seimas with other duties or work (save the exceptions provided for in the Constitution), as well as the prohibition precluding a member of the Seimas from receiving other remuneration (save the exceptions provided for in the Constitution), as established in the Constitution, gives rise to the duty of the legislature to establish, by means of a law, such a legal regulation that would make it possible to verify whether the limitations imposed in Article 60 of the Constitution on a member of the Seimas are followed" … of the same ruling, means, *inter alia*, that the legislature must establish such a procedure that would ensure the due process of law, would make it possible to properly investigate and establish whether a certain member of the Seimas has taken (or has not taken) up or has given (or has not given) up the employment incompatible with the duties of a member of the Seimas, and would make it possible to take a fair decision as regards the mandate of the said member of the Seimas.

The equality of the rights of the members of the Seimas

The Constitutional Court's conclusion of 10 November 2012

… the constitutional status of all members of the Seimas is the same, regardless of whether they were elected while applying a single (either proportional or majoritarian) system of elections or different systems of elections (when the legislature choses the so-called mixed system of parliamentary elections). As it was held in the Constitutional Court's rulings of 25 January 2001 and 1 July 2004, under the Constitution, each member of the Seimas represents the entire Nation, all the members of the Seimas are equal and they must have the same opportunities to participate in the work of the Seimas.

The cessation of the powers of a member of the Seimas when the election is declared invalid or the law on election is grossly violated (Item 6 of Article 63 of the Constitution)

The Constitutional Court's conclusion of 10 November 2012

… under the Constitution, the gross violations of the principles of democratic, free, and fair elections, *inter alia*, the honesty and transparency of the election process, committed during elections to the Seimas may also be established later, after the elected members of the Seimas have acquired their powers, i.e. after the elected Seimas convenes for its first sitting.

Item 6 of Article 63 of the Constitution prescribes that the powers of a member of the Seimas cease when the election is declared invalid, or the law on election is grossly violated. This constitutional provision implies the powers of the Seimas to discontinue the powers of a member of the Seimas if gross violations of [the principles of] democratic, free and fair elections, which give rise to reasonable doubts regarding the lawfulness of the election of that member of the Seimas, are established after the said member of the Seimas has acquired his/her powers. Under Item 6 of Article 63 of the Constitution, the powers of a member of the Seimas may be terminated both when the election is declared invalid (for example, in a single-member constituency when gross violations (raising reasonable doubts as to the lawfulness of the election of a certain member of the Seimas where it is impossible to establish the election results reflecting the genuine will of

the electorate) of the law on election are established, and when the election is not declared invalid (for example, where gross violations of the law on election are established, which raise reasonable doubts as to the lawfulness of the election of certain members of the Seimas in the multi-member constituency or a multi-member constituency, but where it is possible to establish the election results reflecting the genuine will of the electorate).

In this context, it needs to be noted that Item 1 of Paragraph 3 of Article 105 of the Constitution establishes the powers of the Constitutional Court, *inter alia*, to present a conclusion whether there were the violations of election laws during the elections of the members of the Seimas; under Paragraph 5 of Article 106 of the Constitution, the Seimas and the President of the Republic may request that the Constitutional Court present a conclusion in cases concerning an election to the Seimas; Paragraph 3 of Article 107 of the Constitution provides, *inter alia*, 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. In view of this fact, the conclusion should be drawn that the Seimas may adopt a decision on revoking the powers of a member of the Seimas under Item 6 of Article 63 of the Constitution only on the grounds of the Constitutional Court's conclusion that the election law was grossly violated during the election to the Seimas, while the Constitutional Court may present the said conclusion only following an inquiry by the Seimas or the President of the Republic.

The procedure for abolishing the personal immunity of a member of the Seimas (Paragraphs 1 and 2 of Article 62 of the Constitution)

The Constitutional Court's ruling of 27 April 2016

Paragraphs 1 and 2 of Article 62 of the Constitution prescribe:

"The person of a Member of the Seimas shall be inviolable.

The Members of the Seimas may not be held criminally liable or be detained, or have their liberty restricted otherwise, without the consent of the Seimas."

The Constitutional Court has held that the system of the guarantees of both the work of a member of the Seimas at the Seimas and other parliamentary activity comprises, *inter alia*, the immunities of a member of the Seimas (ruling of 1 July 2004). The provisions of Paragraphs 1 and 2 of Article 62 of the Constitution consolidate the additional guarantees of the personal immunity of a member of the Seimas, which are necessary and compulsory for the proper performance of the duties of a member of the Seimas, as a representative of the Nation; the immunity of the members of the Seimas, who implement the duties assigned to them under the Constitution and laws, must ensure that the Seimas will be able, without any hindrance, to perform the functions provided for under the Constitution (ruling of 8 May 2000); the right of a member of the Seimas to his/her liberty and his/her personal immunity during the established term of office may be limited only upon the consent of the Seimas (ruling of 25 January 2001).

[…]

… the procedure under which the Seimas may give its consent that is provided for in Paragraph 2 of Article 62 of the Constitution (without such consent a member of the Seimas may not be held criminally liable or be detained, or have his/her liberty restricted otherwise) may be laid down in the Statute of the Seimas. In establishing such a procedure, the Seimas must pay regard to the norms and principles of the Constitution. The procedure (which is established in the Statute of the Seimas) under which the Seimas gives its consent to holding a member of the Seimas criminally liable or to his/her detention, or to restricting his/her liberty otherwise, is binding on the Seimas: while deciding on whether to give such consent, the Seimas must follow the procedure laid down in the Statute of the Seimas. If the Seimas, when implementing its powers to give or not to give such consent, *inter alia*, by adopting a concrete legal act by which the will of the Seimas is expressed, committed a substantial violation of the procedure established in the Statute of the Seimas, not only Paragraph 1 of Article 69 of the Constitution and the constitutional principle of a state under the rule of law, but also Paragraph 2 of Article 62 of the Constitution, which provides that the members

of the Seimas may not be held criminally liable or be detained, or have their liberty restricted otherwise, without the consent of the Seimas, would be ignored.

[…]

… in view of 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), it should be noted that abolishing the personal immunity of a member of the Seimas is a parliamentary procedure, which may not be deemed legal proceedings *sensu stricto*, since, during the said parliamentary procedure, neither the issue of the guilt of a member of the Seimas nor the imposition of a criminal punishment on a member of the Seimas is decided. At the same time, it should be noted that the decision of the Seimas to abolish the personal immunity of a member of the Seimas with a view to holding him/her criminally liable, detaining him/her, or restricting his/her liberty otherwise gives rise to certain legal consequences for such a member of the Seimas and, in certain cases, determines a change in his/her legal status: the member of the Seimas may be held criminally liable or be detained, or may have his/her liberty restricted otherwise following the adoption of the decision to abolish his/her personal immunity.

The additional guarantees of the personal immunity of a member of the Seimas, which are consolidated in the provisions of Paragraphs 1 and 2 of Article 62 of the Constitution and are necessary for the proper performance of his/her duties, are established in order that he/she is protected from persecution on political or other grounds due to his/her activity as a member of the Seimas; this immunity is not granted in order to create the preconditions for a member of the Seimas who is suspected to have committed a crime to escape criminal responsibility. The Seimas, when establishing and following the procedure for abolishing the personal immunity of a member of the Seimas, is also bound by the fact that, by means of crimes, *inter alia*, those of committing which a member of the Seimas is suspected, "The rights and freedoms of people, as well as the most significant good protected by law" may be grossly violated (ruling of 13 December 1993), as well as by the fact that the striving for an open, just, and harmonious civil society and a state under the rule of law, as consolidated in the Preamble to the Constitution, and the general imperative (expressed in Article 28 of the Constitution) of observing the Constitution and laws means, *inter alia*, that crimes must be prevented, all committed crimes must be solved, and culprits must be brought to justice. Thus, a legal regulation governing the procedure for abolishing the personal immunity of a member of the Seimas must be such that, in the event that there are grounds for holding a member of the Seimas criminally liable, there would be no preconditions for the member of the Seimas to escape criminal responsibility, since, otherwise, the administration of justice would be precluded. Under the Constitution, *inter alia*, Paragraph 2 of Article 1 of Article 62 thereof, and the constitutional principle of a state under the rule of law, the Seimas must establish such a legal regulation governing the procedure for abolishing the personal immunity of a member of the Seimas that would meet the requirements of the due process of law, as, for instance: issues concerning the rights and/or the guarantees of activity of a member of the Seimas must be decided while ensuring his/her right and possibility of defending such rights and guarantees; a member of the Seimas, when the issue of abolishing his/her immunity is decided, must be ensured the right to be heard at least once directly or through a person authorised by him/her. In view of the fact that the consent of the Seimas to holding a member of the Seimas criminally liable, to detaining him/her, or to restricting his/her liberty otherwise opens up the possibility of continuing criminal proceedings, the Seimas, when regulating the procedure for giving such consent, may link the procedure for considering the question of abolishing the immunity of a member of the Seimas with the principles of criminal proceedings (with the requirements determined by such principles).

Requirements for a legal regulation governing the payment of remuneration for the work of a member of the Seimas (*inter alia*, in cases where a member of the Seimas fails to attend the sittings of both the Seimas and its structural subunits)

The Constitutional Court's ruling (no KT26-N13/2016) of 5 October 2016

… under Paragraph 3 of Article 60 of the Constitution, the work of the members of the Seimas, as well as expenses relating to their parliamentary activities, is remunerated from the state budget. Thus, under Paragraph 4 of Article 60 of the Constitution, the Seimas, while regulating, by means of a law, one of the guarantees of the parliamentary activity of a member of the Seimas – the payment of remuneration for the work of a member of the Seimas – must also pay regard to the imperatives, which arise from the Constitution, concerning the use of the funds of the state budget.

[…]

… the concept of the procedure for the proper possession, use, and disposal of state-owned property, *inter alia*, the funds of the state budget, which is implied by of the Constitution, *inter alia*, by Paragraph 2 of Article 128 thereof, and the constitutional principle of responsible governance give rise to the imperative of ensuring, by means of a law, the reasonable use of the funds of the state budget allocated for the remuneration of the members of the Seimas.

Thus, the Constitution, *inter alia*, Paragraph 3 of Article 60 thereof, and the constitutional principle of responsible governance give rise to the duty of the legislature to comply with the following requirements … in the course of regulating the payment of remuneration for the work of the members of the Seimas:

– the work of the members of the Seimas, as provided for in Paragraph 3 of Article 60 of the Constitution, is remunerated from the state budget; the main form of this work is participation in the sittings of the Seimas, as well as the sittings of the committees or other structural subunits of the Seimas to which the members of the Seimas are appointed according to the procedure prescribed in the Statute of the Seimas;

– the episodic fulfilment of the constitutional powers (such as drafting laws and other legal acts of the Seimas, meeting with voters, or performing parliamentary activities in other ways) of a member of the Seimas (or continuous fulfilment of such powers only in part) where such a member of the Seimas, without an important and justifiable reason, denies the constitutional duty of a member of the Seimas to attend the sittings of the committees or other structural subunits of the Seimas to which he/she is appointed according to the procedure prescribed in the Statute of the Seimas, where such sittings, as mentioned before, is the main form of the work of a member of the Seimas, i.e. when such a member of the Seimas is regularly absent from such sittings without an important and justifiable reason, may not be regarded as proper implementation by the member of the Seimas of his/her constitutional duty to represent the Nation, i.e. the duty for the implementation of which the members of the Seimas are remunerated under Paragraph 3 of Article 60 of the Constitution.

In the context of the constitutional justice case at issue, it should also be noted that the legislature, when implementing the duty, which stems from the Constitution, *inter alia*, Paragraph 4 of Article 60 thereof, to regulate, by means of a law, one of the guarantees of the parliamentary activity of a member of the Seimas – the payment of remuneration for the work of a member of the Seimas, *inter alia*, when establishing the amount of such remuneration and the procedure of the payment thereof, must take into consideration the aforementioned constitutional imperatives, which imply the constitutional duty of a member of the Seimas, *inter alia*, to attend the sittings of the Seimas, as well as the sittings of the committees or other structural subunits of the Seimas to which such a member of the Seimas is appointed according to the procedure prescribed in the Statute of the Seimas; the legislature must establish the financial consequences for continuous failure to carry out the said constitutional duty without an important and justifiable reason. The legislature has the discretion to establish various amounts of the reduction of the remuneration of a member of the Seimas (fixed amounts by which the remuneration of the members of the Seimas is reduced), the subject (all the Seimas or its structural subunit) that applies such amounts in accordance with a certain

procedure in a specific situation, and various grounds for reducing the remuneration of a member of the Seimas, *inter alia*, in cases where a member of the Seimas without an important and justifiable reason continuously fails to attend the sittings of the Seimas, as well as the sittings of the committees or other structural subunits of the Seimas to which such a member of the Seimas is appointed according to the procedure prescribed in the Statute of the Seimas.

In this context, it should be noted that, when regulating the payment of remuneration for the work of a member of the Seimas in cases where such a member of the Seimas without an important and justifiable reason continuously fails to attend the sittings of the Seimas, as well as the sittings of the committees or other structural subunits of the Seimas to which he/she is appointed according to the procedure prescribed in the Statute of the Seimas, the legislature must also pay attention to the fact that, as it was held in the Constitutional Court's ruling of 25 January 2001, the recognition of parliamentary opposition is a necessary element of pluralistic democracy; the parliament must take into account the principle of the protection of the minority (ruling of 26 November 1993 and 25 January 2001). Therefore, the open non-attendance of the sittings of the Seimas by the members of the Seimas, as well as the sittings of the committees or other structural subunits of the Seimas to which they are appointed according to the procedure prescribed in the Statute of the Seimas, where such non-attendance is based on views and political objectives of the parliamentary opposition, i.e. where such non-attendance constitutes obstruction as a type of political protest and a method of parliamentary activity in an attempt to prevent the adoption of a decision that is not acceptable to the minority, under the Constitution, in certain situations, may be regarded as a rather important reason for not attending such sittings unless such non-attendance is regular.

It should also be noted that the payment of remuneration from the funds of the state budget to such a member of the Seimas who denies the constitutional duty of a member of the Seimas to attend the sittings of the Seimas, or the sittings of the committees or other structural subunits of the Seimas to which he/she is appointed according to the procedure prescribed in the Statute of the Seimas, where such sittings, as mentioned before, is the main form of the work of a member of the Seimas, i.e. when such a member of the Seimas is regularly absent from such sittings without an important and justifiable reason, should be considered a constitutionally unjustified privilege.

The duty of a member of the Seimas to respect the constitutional rights and freedoms of other persons (on harassment as discriminatory conduct degrading human dignity, see 2. The constitutional status of persons, 2.1. General provisions, 2.1.2. The principle of the equality (of the rights) of persons, the conclusion of 19 December 2017)

The Constitutional Court's conclusion of 19 December 2017

… the requirements, arising from the oath of a member of the Seimas and from the constitutional status of a member of the Seimas, to respect and observe the Constitution and laws, to perform the duties of a representative of the Nation in good faith, to act in the interests of the Nation and the State of Lithuania, and to refrain from conduct degrading the reputation and authority of the Seimas – the representation of the Nation also determine the duty to respect the human rights consolidated and protected by the Constitution and not to use the constitutional status of a member of the Seimas as a representative of the Nation in order to violate the constitutional rights and freedoms of other persons.

The constitutional nature of the Seimas as the state authority institution, through which the Nation exercises its supreme sovereign power, and the particularities of the constitutional status of a member of the Seimas as a representative of the Nation (this status … is different from the legal status of all other citizens) determine the fact that the actions of a member of the Seimas that violate the constitutional rights or freedoms of other persons, especially if they are carried out using the constitutional status of a member of the Seimas, regardless of whether such conduct of the member of the Seimas is related to his/her parliamentary activities, can grossly violate the Constitution and breach the oath of a member of the Seimas, as well as degrade the reputation and authority of the Seimas – the representation of the Nation.

[…]

… due to the nature of harassment, which is discriminatory and degrading human dignity, as well as due to the consequences of harassment, such conduct of a member of the Seimas that may be considered to be harassment inevitably undermines the reputation and authority of the Seimas – the representation of the Nation and discredits state authority irrespective of whether the said conduct of a member of the Seimas is related to his/her parliamentary activities or the use of his/her constitutional status. The conduct of a member of the Seimas that is discriminatory and degrading human dignity and can be regarded as harassment based on gender, *inter alia*, as sexual harassment, should be considered a gross violation of the Constitution, *inter alia*, the provisions of Paragraphs 1, 2, and 3 of Article 21, Paragraphs 1 and 4 of Article 22, and Article 29 thereof, as well as a breach of the oath of a member of the Seimas.

The period of the validity of the oath of a member of the Seimas (Paragraphs 1 and 2 of Article 59 and Article 63 of the Constitution)

The Constitutional Court's conclusion of 22 December 2017

Interpreting the provisions of Paragraphs 1 and 2 of Article 59 and the provisions of Article 63 of the Constitution … it needs to be noted that the beginning of the exercise of the powers of a member of the Seimas as a representative of the Nation is linked to taking the oath of a member of the Seimas, which is specified in the Constitution: a member of the Seimas acquires all the rights of a representative of the Nation only after he/she has taken the oath; 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 the oath to the Republic of Lithuania under the Constitution in the Seimas, 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, after the expiry of the term of powers (incumbency) of the member of the Seimas, the newly elected Seimas convenes for the first sitting (Item 1 of Article 63 of the Constitution). Therefore, under the Constitution, after the cessation of the powers of a member of the Seimas, the oath of the member of the Seimas taken by him/her is no longer binding.

The free mandate of a member of the Seimas (Paragraph 4 of Article 59 of the Constitution)

The Constitutional Court's conclusion of 22 December 2017

… interpreting the constitutional principle of the free mandate of a member of the Seimas in the context of the concept of a pluralistic democracy, which is consolidated in the Constitution, it needs to be noted that, under the Constitution, a member of the Seimas may have and freely express convictions that are different from those of the majority of members of the Seimas; *inter alia*, a member of the Seimas is not obliged to adopt the same concept of state interests that is held by the majority of members of the Seimas. Therefore, under the Constitution, a member of the Seimas, as a representative of the Nation, may communicate with various people, *inter alia*, with people whose views and convictions differ from those held by the majority of members of the Seimas or the majority of members of society. However, in view of the constitutional concept of the free mandate of a member of the Seimas, when communicating with other people, a member of the Seimas, as a representative of the Nation, must follow the interests of the Nation and the State of Lithuania, which are oriented towards the Constitution and the values protected under the Constitution, rather than his/her own interests or the interests of his/her close persons, political parties, organisations, or interest groups, or other personal, private, or group interests, *inter alia*, the interests of another state or persons related to that state that are contrary to the interests of the Republic of Lithuania.

The duty of a member of the Seimas to protect state secrets (other classified information) that become known to a member of the Seimas in the course of performing the duties of a representative of the Nation

The Constitutional Court's conclusion of 22 December 2017

… the constitutionally established oath of a member of the Seimas, as consolidated in Article 5 of the Law on the Procedure for the Entry into Force of the Constitution of the Republic of Lithuania, and the

constitutional status of a member of the Seimas, as consolidated, *inter alia*, in Paragraphs 2 and 4 of Article 59 of the Constitution, give rise to the duties of a member of the Seimas, *inter alia*, to be loyal to the Republic of Lithuania, respect and observe the Constitution and laws, conscientiously perform the duties of a representative of the Nation, and act in the interests of the Nation and the State of Lithuania.

These constitutional duties of a member of the Seimas imply, *inter alia*, the duty to protect state secrets that become known to a member of the Seimas in the course of performing his/her duties of a representative of the Nation. …

Under the Constitution, the state has the duty to guarantee not only the protection of the secrecy of information constituting a state secret, but also the protection of the secrecy of certain other information, in particular that there would be no arbitrary and unlawful attempts to find out or impart such information whose disclosure could inflict damage on the rights and freedoms, as well as legitimate interests, of a person and on other values consolidated, defended, and protected by the Constitution (rulings of 15 May 2007 and 7 July 2011 and the decision of 3 July 2013).

In this context, it should be noted that certain requirements are raised for a person who is granted the right to access information constituting a state secret; such requirements are related to the reliability of a person and his/her loyalty to the State of Lithuania, which should be linked with the trust of the state in that person (rulings of 15 May 2007 and 7 July 2011 and the decision of 3 July 2013); when state institutions decide whether a person has the right to work with or access information that constitutes a state secret (or other classified information), it is necessary to pay regard to the imperative that, in order that a person would have such a right, the state must have unconditional trust in him/her (rulings of 15 May 2007 and 7 July 2011).

Thus … under the Constitution, the condition of undoubted reliability and loyalty to the State of Lithuania is imposed on those members of the Seimas to whom a state secret can become known in the course of carrying out their duties (such information not to be disclosed and not to be imparted whose disclosure could cause harm to the state, as the common good of the entire society, and the political organisation of the entire society, i.e. could violate the most important relationships regulated, defended, and protected under the Constitution).

As the Constitutional Court has noted on more than one occasion, the distrust by the state of a certain person can be determined by the activities of that person, *inter alia*, by the committed violations of law, as well as by the personal qualities of that person, his/her relationships, and other important circumstances; authorisation to access state secrets may be granted only to such persons whose activities, personal qualities, relationships, etc. cannot give grounds for concerns that, once a state secret becomes known to them, a threat will be posed to, or even damage will be inflicted on, the sovereignty of the state, its territorial integrity, constitutional order, or defence power, or other especially important state interests or the foundations of the life of society and the state, or there will be violations of the most important relationships that are regulated, defended, and protected by the Constitution and whose protection and defence must specifically be facilitated by the fact that certain information is classified in accordance with laws (rulings of 15 May 2007 and 7 July 2011).

Thus … the reliability and loyalty to the State of Lithuania of the members of the Seimas to whom a state secret can become known when they are carrying out their duties must be assessed in the light of all important circumstances that characterise the person of a member of the Seimas, *inter alia*, his/her activities, professional and personal qualities, reputation, relationships with other persons, as well as the violations of law committed by him/her. It should be noted that one of the most important qualities of a person to whom a state secret can become known in the course of carrying out duties is his/her integrity, which should be assessed, *inter alia*, by providing the state institutions that make a decision on whether the person has the right to work with or access information constituting a state secret (or other classified information) with all information about his/her relationships with other persons with whom communication can affect the protection of state interests, *inter alia*, the protection of state secrets.

… the constitutional duty of a member of the Seimas to protect state secrets, as well as … requirement, which stems from the oath and constitutional status of a member of the Seimas, that a member of the Seimas must act in good faith, determines the duty of a member of the Seimas to provide, in a fair manner, the state institutions that make a decision on whether the person has the right to work with or access information constituting a state secret (or other classified information) with all the required information, *inter alia*, information about his/her relationships with other persons with whom communication can affect the protection of state interests, *inter alia*, the protection of state secrets. Failure to fulfil this duty can give grounds for doubting the integrity of the member of the Seimas (*inter alia*, in his/her fulfilment of other duties of a representative of the Nation), his/her acting in the interests of the Nation and the State of Lithuania, his/her respect for the Constitution and laws, and thus his/her loyalty to the Republic of Lithuania; the unfair provision of information to the state institutions that make a decision regarding the right to work with or access information constituting a state secret (or other classified information) can also lead to a situation in which a person who is not reliable and loyal to the State of Lithuania will be able to access a state secret and, thereby, pose a threat to the protection of state secrets and, thus, also to the values consolidated and protected by the Constitution.

5.4. THE STRUCTURE OF THE SEIMAS

The structure of the Seimas; political groups in the Seimas

The Constitutional Court's ruling of 26 November 1993

The principles of the equality of the members of the parliament and a free mandate must also be followed in forming the internal structures of parliament. As a rule, structures of two types are formed in parliaments: committees (or commissions) and political groups (or groups of members of the parliament). The former structures are formed on the basis of the specialisation principle of parliamentary activities; this principle ensures the due professional preparation of issues and parliamentary hearing on these issues. The structures of the second group help to realise political orientations and goals of the members of the parliament (not necessarily on the basis of their party membership) as well as to ensure the organised relation of political groups with political parties and organisations represented in parliament.

In determining the internal structure of parliament, the universal principles of its formation must be chosen where such principles would ensure the equal and real opportunities for all the members of the parliament to participate in the formed structural units. Otherwise, not all the members of the parliament would have the opportunity of exercising the additional rights established for the said structural units, which would mean the violation of the principle of the equality of all the members of parliament. Political groups are subunits of the structure of the Seimas; therefore, the establishment of the procedure of their formation, their rights and duties are the prerogative of parliament, determined by its self-dependence within the limits of the Constitution. Though political groups are mostly formed on the basis of party membership, their most essential mission is to ensure the working capacity of the parliament as well as its normal functioning. … political groups in parliament are formed only by the members of the parliament in accordance with the procedure for their formation that is prescribed by parliament (most frequently, they are formed on the basis of views and political goals), but not by political parties, political organisations, or their coalitions. Though political groups are in close relation with political parties, this does not mean that a political group is a political party in the Seimas or that each party that has its representatives in the Seimas is a political group at the same time. This conclusion is derived from the principle of a free mandate, which is consolidated in the Constitution.

[…]

In determining the procedure of the formation of political groups, the total number of the members of the parliament, the nature of the rights and duties of political groups, as consolidated in the Statute, the necessity to guarantee equal possibilities for all to express views and political goals, the principle of the defence of the minority, minimal requirements for the protection of parliamentary opposition, should be

taken into consideration. Furthermore, in cases of forming the governing body of parliament, when committees are set up and their heads are appointed, funds are distributed, and other parliamentary functions are realised, the cases where minor political groups find themselves in a better position than major ones, should be prevented. However, when applying the said criteria, the principle of a free mandate of a parliament member may not be violated. A decision of the parliament whereby the rights of the members of the parliament to participate in the parliamentary process are differentiated violates the rights of a member of the parliament as a representative of the Nation.

[…]

The equality of the members of the Seimas in forming political groups on the basis of views and political goals is an important element of the implementation of the principle of a free mandate. Since a political group (i.e. the members of the parliament who are registered with it) has more opportunities to participate in the activities of the parliament than a member of the Seimas who does not belong to any political group, it must be ensured that all the members of the Seimas have the opportunity freely to choose and form political groups. Seeking to ensure the working capacity and effectiveness of the Seimas, it is important to establish the minimum number of the members of a political group.

It would be possible to guarantee the rights and possibilities of those members of the Seimas who do not register themselves as political groups, where the said rights and possibilities are equal with those of other members of the Seimas and allow the implementation of the rights of a representative of the Nation, by recognising that they are members of a mixed political group and that such a political group has equal rights with other political groups.

Parliamentary opposition

The Constitutional Court's ruling of 25 January 2001

The recognition of parliamentary opposition is a necessary element of pluralistic democracy. The Statute of the Seimas must establish guarantees for opposition activities.

The discretion of the Seimas to establish its own structure; ad hoc investigation commissions of the Seimas

The Constitutional Court's ruling of 13 May 2004

The Seimas consists of representatives of the Nation – 141 members of the Seimas (Paragraph 1 of Article 55 of the Constitution). Legal acts must establish the structure of the Seimas and the procedure of its work in order that the Seimas, the representation of the Nation, would be able to perform its constitutional functions.

Article 76 of the Constitution provides that the structure and procedure of activities of the Seimas are established by the Statute of the Seimas and that the Statute of the Seimas has the force of a law. Under Paragraph 2 of Article 70 of the Constitution, the Statute of the Seimas is signed by the Speaker of the Seimas.

Thus, as the Seimas, under the Constitution, has the discretion to establish its own structure, it also has the discretion to form its structural subunits and the discretion to establish the names of its structural subunits, their competence, composition, interrelations among them, their term of activity, as well as to formulate certain tasks for them. While establishing all this, the Seimas is bound by the norms and principles of the Constitution.

… the Seimas has the constitutional powers to form structural subunits whose term of activities is not defined in advance, i.e. its permanent structural subunits, as well as such structural subunits that are assigned only to solve a certain issue (or certain issues) and cease their activity after they solve the said issue (or issues), i.e. provisional (ad hoc) structural subunits.

… as the Seimas has the powers in every case, when it becomes necessary to decide a certain issue falling under the constitutional competence of the Seimas, to seek the exhaustive and objective information needed to adopt particular decisions, it also has discretion to form such its structural subunits that would be

assigned to conduct research in order to obtain exhaustive and objective information about the processes taking place in the state and society and about the situation in various areas of the life of the state and society.

The fact that, under the Constitution, the structure of the Seimas and the procedure for its work are established by the Statute of the Seimas, as well as that the Statute of the Seimas is signed by the Speaker of the Seimas, *inter alia*, means that the Seimas, while paying regard to the Constitution, has the right to decide, by itself, the questions of the formation of its structural subunits and those of their competence and organisation of their work, and that no other state institution may interfere with these constitutional powers of the Seimas.

At the same time, it needs to be noted that it is impossible to interpret the provision "The structure and procedure of activities of the Seimas shall be established by the Statute of the Seimas" of Article 76 of the Constitution only linguistically, i.e. as meaning that the powers of the structural subunits of the Seimas may be established only in the Statute of the Seimas. For instance, in order that it could properly perform its constitutional functions, the Seimas may also require to form such its structural subunits that would have the powers in respect of various state or municipal institutions, their officials, or other persons. In the context of the case at issue, it needs to be noted that such powers may also be related to the receipt of information from state or municipal institutions, their officials and other persons about the processes taking place in the state and society, about the situation in various spheres of life of the state and society and arising problems. It needs to be emphasised that the receipt of this information may not be dependent on the fact whether or not particular institutions or other persons are accountable to the Seimas: in order to receive exhaustive and objective information necessary to adopt the respective decisions, the Seimas, as the representation of the Nation, must have an opportunity to receive information not only from institutions, other persons that are accountable to it, but also from persons that are not accountable to it. Where it is necessary to establish the authoritative empowerments of a structural subunit of the Seimas in regard of the institutions, their officials, or other persons that are not accountable to the Seimas (including the right to demand the information the submission whereof is regulated in laws), such powers of the structural subunit of the Seimas must be established by means of a law. In establishing such powers, the norms and principles of the Constitution must be complied with.

It should also be noted that certain questions linked with the formation of the structural subunits of the Seimas, the establishment of their competence, the formation of their composition, or the formulation of tasks to them may be decided by means of substatutory legal acts of the Seimas. Such substatutory legal acts of the Seimas may not be in conflict with laws, as well as with the Statute of the Seimas. If a substatutory act of the Seimas sets the powers of a structural subunit of the Seimas in regard of state or municipal institutions, their officials, and other persons, the provisions of such a substatutory act of the Seimas must be based on the provisions of laws.

It needs to be emphasised that, under the Constitution, the Seimas, having formed a certain structural subunit, having established its powers, having set certain tasks to it, also has the right, in accordance with the procedure established in legal acts, to assess the activities of such its structural subunit and the results of the said activities, irrespective of the fact whether such a structural subunit is permanent or provisional (ad hoc). The Seimas has the discretion to decide on the form of assessing the activities of its structural subunit and the results of such activities. For instance, the Seimas may decide whether or not to give its assent to the activities of its structural subunit or the results of the said activities, or whether to give its assent to such activities only in part (with reservations); the Seimas may state whether a structural subunit formed by it has performed the tasks set to it, or whether it failed to perform them, or whether it performed them only in part, etc.

[…]

Thus, under the Constitution, the Seimas has the right to assess both the activity of an ad hoc investigation commission formed by it and a conclusion made by this commission … . The Seimas may express its opinion and point of view in various forms as regards a conclusion of an ad hoc investigation commission of the Seimas. For example, the Seimas may decide whether to give its assent or not to give its

assent to a conclusion of an ad hoc investigation commission of the Seimas, or to give its assent to such a conclusion in part (with reservations); the Seimas may state that an ad hoc investigation commission formed by it has performed the tasks that have been formulated to it, or that it has not performed them, or that it performed them in part; the Seimas may also state that an ad hoc investigation commission has finished its activity, or may decide to prolong the activities of such a commission, etc. It needs to be noted that a conclusion of an ad hoc investigation commission of the Seimas is not binding on the Seimas.

[…]

It is clear that the Seimas is not an institution of pretrial investigation, or the prosecution service, or a court. Therefore, it needs to be noted that the formulation of the opinion and point of view of the Seimas regarding a conclusion of an ad hoc investigation commission of the Seimas formed by it in a resolution of the Seimas may not be interpreted, under the Constitution, as the legal qualification of the actions that the said ad hoc commission has investigated, or the legal qualification of the decisions adopted by it on the issues that it was assigned to investigate, or the legal qualification of other circumstances that were elucidated by it. The Seimas, after it decides to give or not to give its assent to a conclusion of an ad hoc investigation commission of the Seimas, or to give its assent to such a conclusion in part (with reservations), does not adopt such a decision on the compliance of the said actions, decisions, and circumstances with legal acts that is binding on other state institutions (including the institutions of pretrial investigation, the prosecution service, courts), but it merely formulates its point of view as to a conclusion of the said ad hoc investigation commission. The resolution of the Seimas in which the opinion and point of view of the Seimas are formulated as to a conclusion of the Seimas ad hoc investigation commission that was formed by it is not binding on the institutions of pretrial investigation, the prosecution service, and courts.

The discretion of the Seimas to establish its own structure; the authoritative empowerments of a structural subunit of the Seimas with regard to the institutions, their officials, or other persons that are not accountable to the Seimas must be established by means of a law

The Constitutional Court's ruling of 4 April 2006

In its ruling of 13 May 2004, the Constitutional Court held that, as the Seimas has the powers in every case, when it becomes necessary to decide a certain issue falling under the constitutional competence of the Seimas, to seek the exhaustive and objective information needed to adopt particular decisions, it also has the discretion to form such its structural subunits that would be assigned to conduct research in order to obtain exhaustive and objective information about the processes taking place in the state and society and about the situation in various areas of the life of the state and society. In the same ruling, the Constitutional Court also held that, as the Seimas, under the Constitution, has the discretion to establish its structure, it also has the discretion to form its structural subunits and the discretion to establish the names of its structural subunits, their competence, composition, interrelations among them, their term of activity, as well as to formulate certain tasks for them; while establishing this, the Seimas is bound by the norms and principles of the Constitution.

Under Article 76 of the Constitution, the structure and procedure of activities of the Seimas are established by the Statute of the Seimas, which has the force of a law. In this context, it should be mentioned that it is impossible to interpret only linguistically the provision that the structure and procedure of activities of the Seimas are established by the Statute of the Seimas, i.e. only as meaning that the powers of the structural subunits of the Seimas may be established only in the Statute of the Seimas; for instance, in order that it could perform its constitutional functions, the Seimas may also require to form such its structural subunits that would have the powers with regard to various state or municipal institutions, their officials, or other persons. Such powers may be related to the receipt of information from state or municipal institutions, their officials, or from other persons about the processes taking place in the state and society, as well as about the situation in various spheres of the life of the state and society and arising problems; the receipt of this information cannot be dependent on the fact whether or not particular institutions or other persons are accountable to the Seimas; where it is necessary to establish the authoritative empowerments of a structural

subunit of the Seimas in regard of the institutions, their officials, or other persons that are not accountable to the Seimas (including the right to demand the information the submission whereof is regulated in laws), such powers of the structural subunit of the Seimas must be established by means of a law (ruling of 13 May 2004).

Ad hoc (provisional) investigation commissions of the Seimas (also see 5.2. The functions and powers of the Seimas, 5.2.1. General provisions, the ruling of 4 April 2006 ("The right of the Seimas to receive information that is necessary to exercise its constitutional powers")

The Constitutional Court's ruling of 4 April 2006

… in a democratic state under the rule of law, it is not allowed to deny the powers of the parliament – the representation of the Nation – to take measures, *inter alia*, to form the structural subunits of the parliament for this purpose, and to commission them to conduct necessary research in order to receive information about the processes taking place in the state and society, as well as about the situation in various areas of the life of the state and society and arising problems; otherwise, the proper fulfilment of the functions of the parliament – the representation of the Nation – and the adoption of necessary decisions would not be ensured. The said powers arise from the very essence of parliamentary democracy and are one of the features of parliamentarism. In the practice of the parliaments of democratic states under the rule of law, the possibility for parliaments to take measures in order to receive information about processes taking place in the state and society, as well as about the situation in various areas of the life of the state and society and arising problems is also implemented by means of such institutions as ad hoc commissions (which are assigned to conduct certain research) formed by parliaments, parliamentary hearings, deliberations, etc.

The institution of ad hoc commissions formed by the Seimas, *inter alia*, ad hoc investigation commissions, is also characteristic of the parliamentarism tradition of the State of Lithuania.

Under the Constitution, it is not permitted to establish any exhaustive (final) list of questions for the investigation of which the Seimas may form ad hoc investigation commissions: since the Seimas, as the representation of the Nation and the institution of legislation (performing … not only the legislative but also various other functions), may pass laws and other legal acts regulating most varied social relationships, it can virtually form ad hoc investigation commissions designated for an investigation into most varied processes that take place in the state and society.

The principle of responsible governance is consolidated in the Constitution (rulings of 1 July 2004, 13 December 2004, and 2 June 2005). The Constitution does not imply any such activities of the Seimas where the Seimas collects all information necessary for legislation and other functions of the Seimas by itself, by not relying on the information submitted to it by other state institutions, and where the formation of ad hoc or similar commissions and investigation performed by them prevail in the activities of the Seimas. Quite to the contrary, the Constitution implies the institution of ad hoc investigation commissions of the Seimas and the legal regulation of the formation of such commissions and of their activities where the said ad hoc investigation commissions are formed not in order to investigate any types of questions, but only special questions, i.e. those of state importance. The powers of ad hoc investigation commissions of the Seimas should be related to the constitutional mission and functions of the Seimas.

The Constitution does not imply the possibility of forming any such ad hoc investigation commissions of the Seimas that would be assigned to carry out an investigation into such matters that institutions of public power, under the Constitution, may not investigate at all, as, for example, the circumstances of the private or family life of an individual if such an investigation unreasonably interferes with the private life of an individual, which is defended and protected under the Constitution, if the inviolability of private life is violated, etc.

The constitutional principle of the separation of powers and other provisions of the Constitution make it possible to draw the conclusion that the Seimas has no powers to form any such ad hoc investigation commissions that would be assigned to carry out an investigation into the matters in the course of the

investigation of which the powers of other institutions that exercise public power, as well as the powers of other state and municipal institutions provided for in the Constitution and/or laws, would be interfered with. For example, an ad hoc investigation commission of the Seimas cannot take over the constitutional powers of courts or otherwise interfere with the implementation of the constitutional competence of courts, nor may it violate the independence of judges and courts in the administration of justice, let alone administer justice by itself; an ad hoc investigation commission of the Seimas may not take over the constitutional powers of prosecutors or otherwise interfere with the implementation of the constitutional competence of prosecutors, nor may it violate the independence of a prosecutor when he/she organises and directs a pretrial investigation and upholds charges on behalf of the state in criminal cases (ruling of 13 May 2004).

However, the fact that ad hoc investigation commissions of the Seimas may not be assigned to carry out an investigation into the matters in the course of investigation of which the powers of other institutions that exercise public power, as well as the powers of other state and municipal institutions provided for in the Constitution and/or laws, would be interfered with does not mean that ad hoc investigation commissions of the Seimas cannot have any powers with regard to state or municipal institutions, their officials, and other persons at all. Such powers may be established by means of a law and by paying regard to the Constitution.

The formation of ad hoc (provisional) investigation commissions of the Seimas

The Constitutional Court's ruling of 4 April 2006

… the nature of ad hoc investigation commissions of the Seimas as structural subunits of the Seimas implies that an initiative of forming such a commission may arise only in the Seimas, i.e. only members of the Seimas may express it. Thus, under the Constitution, it is not allowed to establish any such a legal regulation whereby the formation of an ad hoc investigation commission of the Seimas is initiated not by the members of the Seimas, but by other subjects.

The Seimas, when regulating, by means of legal acts, the formation of ad hoc investigation commissions of the Seimas, may establish the ways and organisational forms for the members of the Seimas by using which they can express an initiative to form an ad hoc investigation commission of the Seimas; the Seimas may establish, *inter alia*, that such an initiative can be expressed by certain Seimas structural subunits (e.g. political groups, committees) and/or a group of a certain number of the members of the Seimas. … it should be noted that, in view of the fact that ad hoc investigation commissions of the Seimas can be formed for an investigation into not any, but only special questions, i.e. those of state importance, the said group of members of the Seimas should be sufficiently large; on the other hand, the establishment of a too large number of the members of the Seimas constituting such a group would groundlessly restrict the possibilities for the members of the Seimas to initiate the formation of ad hoc investigation commissions of the Seimas in order that the Seimas could receive information about processes taking place in the state and society, as well as about the situation in various spheres of life of the state and society and arising problems, where such information is necessary so that the Seimas – the representation of the Nation would effectively act in the interests of the Nation and the State of Lithuania.

Taking account of the fact that the Constitution implies the protection of the parliamentary minority and the minimum requirements of the protection of the Seimas opposition (rulings of 26 November 1993 and 25 January 2001), as well as the fact that the recognition of the parliamentary opposition is a necessary element of pluralist democracy (ruling of 25 January 2001), it is also possible to establish such a legal regulation whereby the Seimas opposition might initiate the formation of ad hoc investigation commissions.

As such, the statement about the initiative to form an ad hoc investigation commission of the Seimas, regardless of who expressed it, does not imply the formation of such a commission. It needs to be emphasised that an ad hoc investigation commission of the Seimas is a subject formed by the entire Seimas, but not by its part, not by a structural subunit of the Seimas or by a group of members of the Seimas; the powers of an ad hoc investigation commission of the Seimas may stem only from an act of the Seimas as the representation of the Nation, i.e. from the expression of the will of the Seimas, but not from the expression of the will or intention of a certain subunit of the Seimas or of a group of members of the Seimas. Due to this, it is only

the Seimas that can decide on whether or not to form an ad hoc investigation commission on a certain issue, it is only the Seimas that can establish its composition, tasks, etc. – no one else can express such will for the Seimas, i.e. neither any structural subunit of the Seimas nor any group of members of the Seimas.

The majority principle is among the democratic principles of adopting decisions (ruling of 22 July 1994). The political will of the majority of the members of the Seimas is reflected in decisions adopted by the Seimas (conclusion of 31 March 2004). It needs to be emphasised that, under the Constitution, the will of the Seimas regarding the formation of an ad hoc investigation commission of the Seimas cannot be expressed otherwise than by vote of the members of the Seimas at a sitting of the Seimas and the adoption of the respective substatutory legal act. The Constitutional Court has held that the substatutory acts of the Seimas whereby questions related to the formation of the structural subunits of the Seimas (thus, including ad hoc investigation commissions of the Seimas), their competence, and composition may not be in conflict with laws, as well as with the Statute of the Seimas, and that, if a substatutory act of the Seimas sets the powers of a structural subunit of the Seimas (thus, including an ad hoc investigation commission of the Seimas) with regard to state or municipal institutions, their officials, and other persons, the provisions of such a substatutory act of the Seimas must be based on the provisions of laws (ruling of 13 May 2004).

In each particular case, before deciding on the formation of an ad hoc investigation commission, the Seimas must deliberate and assess whether or not such an ad hoc investigation commission of the Seimas can be formed according to the Constitution and laws. The Seimas must deliberate and assess, *inter alia*, the following: whether the issue due to which the formation of an ad hoc investigation commission of the Seimas is proposed is really of state importance; whether it is proposed that the said ad hoc investigation commission of the Seimas be assigned to carry out an investigation into such matters that the institutions of public power may not investigate at all under the Constitution; whether it is proposed that this ad hoc investigation commission of the Seimas be assigned to carry out an investigation into the matters in the course of investigation of which the powers of other institutions that exercise public power, as well as the powers of other state and municipal institutions provided for in the Constitution and/or laws, would be interfered with.

Before deciding on the formation of an ad hoc investigation commission, the Seimas may also assess (*inter alia*, also from the aspect of expediency) whether there are any circumstances that would justify the non-forming of such a commission, as, for instance: whether a certain question has already been investigated or whether it is under investigation by an ad hoc investigation commission of the Seimas or by another institution, whether particular work may be performed by a structural subunit of the Seimas, which is already established and is acting, etc.

It needs to be emphasised that the Seimas, when forming an ad hoc investigation commission of the Seimas, must pay regard to the imperative of the protection of the Seimas minority and the minimum requirements of the protection of the Seimas opposition. The said imperative and requirements stem from the Constitution and imply, *inter alia*, that an ad hoc investigation commission of the Seimas may not be formed only from the representatives of the political majority of the Seimas, without including representatives from the minority (opposition) if they so request. It should also be emphasised that in the course of forming an ad hoc investigation commission of the Seimas regard must be paid to the will and interest of the initiators of forming the commission in order to investigate precisely the question formulated by them and it must be ensured that the initiators are properly represented in the ad hoc investigation commission of the Seimas.

[…]

It needs to be noted that in the course of forming ad hoc investigation commissions of the Seimas regard must paid to the principle of the free mandate of a member of the Seimas, which is consolidated in the Constitution, *inter alia*, in Paragraph 4 of Article 59 thereof. The said principle is one of the guarantees of the independence of the activities of the members of the Seimas and their equal rights. The principle of the free mandate of a member of the Seimas, which is consolidated in the Constitution, gives rise to the right of

a member of the Seimas to vote at his/her discretion in the course of adopting any decision of the Seimas, i.e. to vote on each issue according to his/her conscience.

The principle of the free mandate of a member of the Seimas implies that a member of the Seimas, when he/she, together with other members of the Seimas, initiates the formation of an ad hoc investigation commission of the Seimas, participates in the adoption of a resolution of the Seimas on the formation of an ad hoc investigation commission of the Seimas, participates in the activities of such an ad hoc investigation commission of the Seimas, and participates in the adoption of a resolution of the Seimas on the activities of the said ad hoc investigation commission and assessment of the results of its activities, must follow only the Constitution, the interests of the state, as well as his/her own conscience (Paragraph 4 of Article 59 of the Constitution) – such freedom of a member of the Seimas may not be restricted by the mandate of the electorate, or by any political or other demands of the political parties or organisations that nominated him/her, or by the will of other members of the Seimas. It should be mentioned that the members of the Seimas may not be persecuted for their votes or speeches at the Seimas (however, they may be held liable for personal insult or defamation) (Paragraph 3 of Article 62 of the Constitution).

[…]

… in cases where the question for an investigation into which the formation of an ad hoc investigation commission of the Seimas is proposed is really of state importance and there are not any circumstances due to which such a commission may not be formed under the Constitution and laws, and if there are no other circumstances that would justify the non-forming of such a commission, the free mandate of the members of the Seimas must be used in such a way that would make it possible for the Seimas to act effectively in the interests of the Nation and the State of Lithuania and to perform properly its constitutional obligation.

… the principle of responsible governance is consolidated in the Constitution. The Seimas should not use its constitutional powers to form ad hoc investigation commissions in such a way whereby the Seimas would itself collect all information necessary for legislation and performance of its other functions and whereby the formation of ad hoc investigation or similar commissions and investigation conducted by them would prevail in the activities of the Seimas; as mentioned above in this ruling of the Constitutional Court, the Constitution does not imply any such activity of the Seimas. Otherwise, the preconditions might be created where certain circumstances would hinder the work of the parliament, would hinder the Seimas, the representation of the Nation, to act rationally and effectively in the interests of the Nation and the State of Lithuania.

It needs to be noted that, under the Constitution, each decision of the Seimas on forming an ad hoc investigation commission (decision on forming such a commission, a decision on non-forming such a commission, etc.), regardless of its expression (legal form), can be impugned before the Constitutional Court with regard to the compliance of this decision (act of the Seimas) with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution. Under the Constitution, the subjects specified in Paragraph 1 of Article 106 of the Constitution, *inter alia*, not less than 1/5 of all the members of the Seimas, i.e. a group of not less than 29 members of the Seimas, can do so.

The legal force of a conclusion given by an ad hoc (provisional) investigation commission of the Seimas

The Constitutional Court's ruling of 4 April 2006

… a conclusion of an ad hoc investigation commission of the Seimas is not binding on the Seimas. Under the Constitution, the Seimas, having formed an ad hoc investigation commission and having set certain tasks to it, also has the power to assess, according to the procedure established in legal acts, the activities of such an ad hoc investigation commission and the results of such activities. The Seimas has discretion to decide on the form of assessing the activities of its ad hoc investigation commission and the results of such activities. For instance, the Seimas may decide whether or not to give its assent to the activities of its ad hoc investigation commission or the results of the said activities, or whether to give its assent to such activities only in part (with reservations); the Seimas may state whether an ad hoc investigation

commission formed by it has performed the tasks set to it, or whether it failed to perform them, or whether it performed them only in part, etc. (ruling of 13 May 2004).

The Seimas, after it decides to give its assent to a conclusion of an ad hoc investigation commission formed by it, does not adopt such a decision on the compliance of the investigated actions, decisions, and circumstances with legal acts that is binding on other state institutions (including institutions of pretrial investigation, the prosecution service, courts), but it merely formulates its point of view as to a conclusion of the said ad hoc investigation commission. As such, a conclusion (its individual statements) of an ad hoc investigation commission of the Seimas does not directly give rise to any legal effects for the persons indicated in it. Only decisions of other institutions and their officials, where such decisions may be adopted in view of a conclusion of an ad hoc investigation commission of the Seimas, may give rise to such legal effects (ruling of 13 May 2004).

The powers of ad hoc (provisional) investigation commissions of the Seimas

The Constitutional Court's decision of 21 November 2006

… the provisions of the Constitution imply broad powers of ad hoc investigation commissions of the Seimas; however, they also consolidate the limits on the investigation activity of ad hoc investigation commissions of the Seimas; the said limits may not be expanded by means of laws or other legal acts.

The Constitution demands, in an imperative manner, the establishment of such a legal regulation – first of all, legislative regulation – that, on the one hand, would ensure the activity of ad hoc investigation commissions of the Seimas that are assigned by the Seimas, the representation of the Nation, to conduct an investigation in order to collect information about certain processes taking place in the state and society, about the situation in various spheres of the life of the state and society and arising problems, and would, thus, also ensure the performance of the control function by the Seimas (parliamentary control) and, consequently, would ensure that there are no spheres in the life of the state in which the Seimas, the representation of the Nation, is prevented from exercising, by paying regard to the Constitution, parliamentary control (provided there is a special matter (of state importance)), and, on the other hand, would ensure that no harm would be inflicted on any values consolidated, defended, and protected by the Constitution if ad hoc investigation commissions of the Seimas are formed for an investigation into such matters that, under the Constitution, cannot be investigated by institutions of public power at all (for instance, the circumstances of the private or family life of an individual if such an investigation unreasonably, from the constitutional point of view, interferes with the private life of an individual, which is defended and protected under the Constitution, if the inviolability of private life is violated, etc.), or any such matters in the course of the investigation of which the powers of other state and municipal institutions (their officials) (*inter alia*, the powers of courts and prosecutors), which are provided for in the Constitution, would be interfered with. The legal regulation established in laws and other legal acts must be such that would ensure a rational balance between these two imperatives, which arise from the Constitution, and would ensure that none of the said imperatives would be ignored or sacrificed for another.

[…]

… as it was held in the Constitutional Court's ruling of 4 April 2006, under the Constitution, it is not permitted to establish any exhaustive (final) list of questions for the investigation of which the Seimas may form ad hoc investigation commissions; the Seimas, as the representation of the Nation, can virtually form ad hoc investigation commissions designated for an investigation into most varied processes that take place in the state and society.

At the same time, it needs to be noted that ad hoc investigation commissions of the Seimas can be formed for an investigation into not any, but only special questions, i.e. those of state importance (rulings of 13 May 2004 and 4 April 2006).

Thus, in general, provided there is a special matter (of state importance), the Constitution does not prohibit the Seimas from forming also such ad hoc investigation commissions that would be assigned to carry out an investigation into the activity of state or municipal institutions, i.e. into how the particular state

or municipal institutions perform their functions defined in the Constitution and laws, and into how they implement the powers established in the Constitution and laws. In order to carry out such a task set by the Seimas, an ad hoc investigation commission of the Seimas also must have the possibility of receiving, under the procedure established in laws, information that is related to the organisation of work in the respective state or municipal institutions, irrespective of whether the decision on certain questions regarding, *inter alia*, the establishment of the structure of institutions, the establishment and liquidation of structural subunits, the appointment of employees to work, their release from office, their transfer to another position, their removal from duties, and other issues related to the career, legal status, etc. of the employees of institutions, falls, according to laws, within the competence of the heads of such institutions or whether other persons also take part in the adoption of such decisions. However, it needs to be emphasised that ad hoc investigation commissions of the Seimas may not be formed for the elucidation of only such specific questions as those mentioned above: an investigation into such questions may not be an objective in itself. The receipt of factual information about such matters may only serve as a means to elucidate special questions (of state importance).

Thus, both from the point of view of lawfulness and/or expediency, ad hoc investigation commissions of the Seimas may not be assigned to carry out an investigation and assessment of or exercise control over the decisions of the heads of state and municipal institutions as regards the professional career of persons who work in the respective institutions, since only the state and municipal institutions (their officials) that have the necessary powers may conduct such an investigation, assessment, and control and may adopt the respective decisions.

Ad hoc investigation commissions of the Seimas may be assigned to carry out an investigation and assessment of the decisions of the heads of state and municipal institutions, *inter alia*, as regards the structure of the respective institutions; however, such investigation and assessment must be conducted insofar as it is necessary in order to elucidate whether these decisions are such that the respective state or municipal institutions can properly perform their functions defined in the Constitution and laws and that they can implement the powers established for them in the Constitution and laws.

In this context, it needs to be noted that, as it was held in this decision of the Constitutional Court, under the Constitution, the control function carried out by the Seimas does not imply that the Seimas directly organises the work of other state or municipal institutions or may, at any time, interfere with the activity of any state or municipal institutions (their officials) that implement public power. The control function carried out by the Seimas also does not imply that the Seimas has the opportunity to adopt such decisions that can be adopted only by the state institutions (their officials) that have the respective competence.

No subunit of the Seimas, including ad hoc investigation commissions of the Seimas, may have any such powers.

It also needs to be noted that, as it was held in the Constitutional Court's ruling of 13 May 2004, "in order that it could properly perform its constitutional functions, the Seimas may also require to form such its structural subunits that would have the powers with regard to various state or municipal institutions, their officials, or other persons"; "such powers may also be related to the receipt of information from state or municipal institutions, their officials, or from other persons about the processes taking place in the state and society, about the situation in various spheres of the life of the state and society and arising problems"; "the receipt of this information may not be dependent on the fact whether or not particular institutions or other persons are accountable to the Seimas: in order to receive exhaustive and objective information necessary to adopt the respective decisions, the Seimas, as the representation of the Nation, must have the possibility of receiving information not only from institutions and other persons that are accountable to it, but also from persons that are not accountable to it"; "where it is necessary to establish the authoritative empowerments of a structural subunit of the Seimas in respect of the institutions, their officials, or other persons that are not accountable to the Seimas (including the right to demand the information the submission whereof is regulated in laws), such powers of the structural subunit of the Seimas must be established by means of a law"; "in establishing such powers, the norms and principles of the Constitution must be complied with".

It was also held in the Constitutional Court's ruling of 4 April 2006 that "the fact that ad hoc investigation commissions of the Seimas may not be assigned to carry out an investigation into the matters in the course of investigation of which the powers of other institutions that exercise public power, as well as the powers of other state and municipal institutions provided for in the Constitution and/or laws, would be interfered with does not mean that ad hoc investigation commissions of the Seimas cannot have any powers in respect of state or municipal institutions, their officials, and other persons at all"; "such powers may be established by means of a law and by paying regard to the Constitution".

The phrases "such powers of the structural subunit of the Seimas must be established by means of a law" and "such powers may be established by means of a law and by paying regard to the Constitution" used herein also mean that laws must *expressis verbis*, clearly and unambiguously, establish what authoritative empowerments an ad hoc commission of the Seimas has in respect of the institutions, their officials, or other persons who are not accountable to the Seimas. In establishing such powers, regard must be paid to the norms and principles of the Constitution, *inter alia*, to the official doctrinal provisions formulated in the Constitutional Court's acts in which the relevant provisions of the Constitution are interpreted.

It needs to be noted that the work of ad hoc investigation commissions of the Seimas must be regulated in order to receive the necessary information and to arrange the interrogation of the persons summoned to the sittings of ad hoc investigation commissions of the Seimas so that a preconceived opinion would not be formed by questions or comments presented by the members of that commission, that human dignity would not be degraded, that the right of a person to private life would not be violated, that only such questions or comments that are connected with the matter under investigation would presented, and that questions would not be imaginary or provocative. In addition, if ad hoc investigation commissions of the Seimas receive such information the non-disclosure of which is defended and protected under the Constitution, it must be ensured that the said information is not made public or disclosed to the persons who, under the Constitution and laws, have no right to receive such information, since such disclosure would inflict damage on the values consolidated, defended, and protected under the Constitution.

In the light of the foregoing arguments … it should be held that … the provision "The constitutional principle of the separation of powers and other provisions of the Constitution make it possible to draw the conclusion that the Seimas has no powers to form any such ad hoc investigation commissions that would be assigned to carry out an investigation into the matters in the course of the investigation of which the powers of other institutions that exercise public power, as well as the powers of other state and municipal institutions provided for in the Constitution and/or laws, would be interfered with" … of the Constitutional Court's ruling of 4 April 2006 … when it is interpreted in the context of the official constitutional doctrinal provisions of the Constitutional Court's ruling of 4 April 2006 and of the Constitutional Court's ruling of 13 May 2004, also means that:

– under the Constitution, the Seimas has the powers, provided there is a special matter (of state importance), also to form such ad hoc investigation commissions that would be assigned to carry out an investigation into the activity of state or municipal institutions, i.e. into how particular state or municipal institutions perform their functions defined in the Constitution and laws and into how they implement the powers established in the Constitution and laws; in order to carry out such a task set by the Seimas, an ad hoc investigation commission of the Seimas also must have the possibility of receiving, under the procedure established in laws, the information that is related to the organisation of work in particular state or municipal institutions, irrespective of whether the decision on certain questions regarding, *inter alia*, the establishment of the structure of institutions, the establishment and liquidation of structural subunits, the appointment of employees to work, their release from office, their transfer to another position, their removal from duties, and other issues related to the career, legal status, etc. of the employees of institutions, falls, according to laws, within the competence of the heads of such institutions or whether other persons also take part in the adoption of such decisions; however, ad hoc investigation commissions of the Seimas cannot be formed for the elucidation of only such specific questions as those mentioned above: the receipt of factual information about such matters may only serve as a means to elucidate special questions (of state importance);

– both from the point of view of lawfulness and/or expediency, ad hoc investigation commissions of the Seimas may not be assigned to carry out an investigation and assessment of or to exercise control over the decisions of the heads of state and municipal institutions as regards the professional career of persons who work in the respective institutions, since only the state and municipal institutions (their officials) that have the necessary powers may conduct such an investigation, assessment, and control and may adopt the respective decisions;

– ad hoc investigation commissions of the Seimas may be assigned to carry out an investigation and assessment of the decisions of the heads of state and municipal institutions, *inter alia*, as regards the structure of the respective institutions; however, such an investigation and assessment must be conducted insofar as it is necessary in order to elucidate whether these decisions are such that the respective state or municipal institutions can properly perform their functions defined in the Constitution and laws and that they can implement the powers established for them in the Constitution and laws;

– if ad hoc investigation commissions of the Seimas receive such information the non-disclosure of which is defended and protected under the Constitution, it must be ensured that the said information is not made public or disclosed to the persons who, under the Constitution and laws, have no right to receive such information, since such disclosure would inflict damage on the values consolidated, defended, and protected under the Constitution;

– it is not permitted that the legal regulation governing the activities of ad hoc investigation commissions of the Seimas would create the preconditions where an ad hoc investigation commission of the Seimas or the Seimas itself directly organises the work of other state or municipal institutions or interferes with the activity of state or municipal institutions (their officials), or adopts such decisions that can be adopted only by the state institutions (their officials) that have the respective competence.

The relationships of ad hoc (provisional) investigation commissions of the Seimas with prosecutors and the state institutions that conduct pretrial investigation and/or are the subjects of operational activities; the submission of information the non-disclosure of which is defended and protected under the Constitution to ad hoc (provisional) investigation commissions of the Seimas

The Constitutional Court's decision of 21 November 2006

… the official constitutional doctrinal provisions … of the Constitutional Court's ruling of 13 May 2004 regarding the relationships of ad hoc investigation commissions of the Seimas with the Prosecution Service of the Republic of Lithuania (with prosecutors) … are also *mutatis mutandis* applicable to the legal regulation of relationships between ad hoc investigation commissions of the Seimas and other state institutions (their officials) that, according to laws, conduct pretrial investigation and/or are the subjects of operational activities.

The Constitution requires that the legislature pass a law laying down the legal regulation ensuring that the information the non-disclosure (complete or partial) of which is protected and defended under the Constitution, *inter alia*, such information that constitutes a secret protected and defended under the Constitution, would be submitted to an ad hoc investigation commission of the Seimas (which is formed not in order to investigate the matters that an ad hoc investigation commission of the Seimas may not investigate, or the matters in the course of the investigation of which the powers of other institutions that exercise public power, as well as the powers of other state and municipal institutions provided for in the Constitution and/or laws, would be interfered with), provided such information may be submitted to such a commission on the whole, only by following, in the strictest manner, the procedure established in laws and by guaranteeing most strictly that this information will not be disclosed to any person who, under the Constitution and laws, does not have the right to receive such information, since such disclosure of the said information would inflict damage on the values consolidated, defended, and protected under the Constitution.

It is clear that submitting any information to the Seimas, which is a political institution (which is composed of persons belonging to various political forces) is always connected with the risk that this information might spread wider than it should under the Constitution and laws.

The legislative consolidation of the legal regulation that effectively guarantees the non-disclosure of the secrets defended and protected under the Constitution and the relevant organisational and technical means are the necessary conditions for submitting information to ad hoc investigation commissions of the Seimas (provided such information may be submitted to an ad hoc investigation commission of the Seimas on the whole).

[…]

It should also be noted that, as held in the Constitutional Court's ruling of 13 May 2004, [the law] "does not provide for any criteria on the basis of which the Office of the Prosecutor General, the National Audit Office, the State Security Department or a pretrial investigation institution might object to submitting the necessary information to an ad hoc investigation commission of the Seimas, or on the basis of which certain limitations could be applied to the use of this information in the work of the said commission".

However, it needs to be specially emphasised that the said legal regulation may not be amended or specified in such a way that would create the preconditions for raising one constitutional value – the control function of the Seimas, which is consolidated in the Constitution, and its constitutional powers to take up by itself an investigation activity on the issue of state importance in order to collect exhaustive and objective information about the processes taking place in the state and society, about the situation in various spheres of the life of the state and society and arising problems – above other constitutional values and for creating opposition between the said constitutional value and other constitutional values, *inter alia*, the independence of prosecutors when they organise and direct pretrial investigation (as mentioned before, particular constitutional doctrinal provisions are also applicable *mutatis mutandis* to the legal regulation of the relationships between ad hoc investigation commissions of the Seimas and other state institutions (their officials) that, according to laws, conduct pretrial investigation and/or are the subjects of operational activities). The said legal regulation may not be amended or modified in a manner that, in the course of establishing the criteria by following which particular state institutions might disagree that an ad hoc investigation commission of the Seimas receives the information required by it, or the criteria under which some other limitations would be applied as regards the use of this information in the work of an ad hoc investigation commission of the Seimas, the constitutionally reasonable powers of such state institutions not to provide someone with certain information or to apply some other limitations would essentially be denied. If these powers of particular institutions to disagree that certain information is submitted or to apply some other limitations were limited or denied altogether, various values consolidated, defended, and protected under the Constitution may be jeopardised.

When such disagreement is expressed, it must be substantiated by the relevant reasoning.

[…]

In connection with the *de lege ferenda* standpoint, it also needs to be noted that no matter what legislative regulation there is, such a legislative regulation must, by paying regard to the Constitution, be only such that would not deny the powers, established by means of a law, of subjects not to disclose the information the disclosure of which might inflict harm on the values consolidated, defended, and protected under the Constitution.

On the other hand, a law must also establish a legal regulation that would make it possible to guarantee that the powers, established by means of a law, of the subjects not to disclose the information the disclosure of which might inflict harm on the values consolidated, defended, and protected under the Constitution would not be used to justify the decisions not to disclose also such information the non-disclosure (complete or partial) of which is not defended and protected under the Constitution and where such information, under the procedure established by means of a law, must be disclosed to certain subjects, *inter alia*, to ad hoc investigation commissions of the Seimas, which are formed for an investigation into special questions (of state importance).

[…]

An ad hoc investigation commission of the Seimas may receive the material of pretrial, operational, or other investigation (provided such information may be submitted to such a commission on the whole),

provided this information is indeed necessary in order that the Seimas could perform its constitutional functions, only by following in the strictest manner the procedure established in laws and by guaranteeing most strictly that this information will not be disclosed to any person who, under the Constitution and laws, does not have the right to receive such information, since such disclosure of the said information would inflict damage on the values consolidated, defended, and protected under the Constitution. It has been held in this decision of the Constitutional Court that the legislative consolidation of the legal regulation that effectively guarantees the non-disclosure of the secrets defended and protected under the Constitution and the respective organisational and technical means are the necessary conditions for submitting information to ad hoc investigation commissions of the Seimas (provided such information may be submitted to an ad hoc investigation commission of the Seimas on the whole).

[…]

It needs to be emphasised that, as a rule, the information at the disposal of the Office of the Prosecutor General, the National Audit Office, the State Security Department or a pretrial investigation establishment … where the said information is the material of pretrial, operational, or other investigation, cannot serve as the grounds for conclusions made by an ad hoc investigation commission of the Seimas until the said pretrial, operational, or other investigation is over and the conclusions of such investigation are formalised by procedural documents; this statement is not an absolute one; however, whatever its exceptions, which arise from the Constitution that contains the obligations to defend and protect the rights and legitimate interests of a person, society and the state, as well as other constitutional values, regardless of whether the legislature has carried out its duty and properly reflected these exceptions in laws, in all cases regard must be paid to the powers of a particular state institution, *inter alia*, the powers of a pretrial investigation institution or/and a subject of operational activities to disagree, by giving reasons, that an ad hoc investigation commission of the Seimas receives the said information that is necessary to it, or to demand that certain limitations be applied for the use of such information in the work of an ad hoc investigation commission of the Seimas.

In this context, it needs to be mentioned that, as it was held in the Constitutional Court's ruling of 13 May 2004, "it is clear that the organisational and technical questions of such access must be coordinated with the state institutions at whose disposal the criminal case or other material and documents are".

In the light of the foregoing arguments … it should be held that … the provision "The constitutional principle of the separation of powers and other provisions of the Constitution make it possible to draw the conclusion that the Seimas has no powers to form any such ad hoc investigation commissions that would be assigned to carry out an investigation into the matters in the course of the investigation of which the powers of other institutions that exercise public power, as well as the powers of other state and municipal institutions provided for in the Constitution and/or laws, would be interfered with" … of the Constitutional Court's ruling of 4 April 2006 … when it is interpreted in the context of the official constitutional doctrinal provisions of the Constitutional Court's ruling of 4 April 2006 and the Constitutional Court's ruling of 13 May 2004, also means that the Seimas has the powers, provided there is a special matter (of state importance), to assign an ad hoc investigation commission of the Seimas to carry out an investigation also into such matters the investigation of which will also require the material of the investigation (as well as pretrial and operational investigation) conducted by the respective institutions; however, the said information cannot be such that, under the Constitution, may not be revealed to an ad hoc investigation commission of the Seimas on the whole; in addition, it is not allowed to deny the powers of the subjects established by law not to disclose the information the disclosure of which could inflict damage on the values consolidated, defended, and protected under the Constitution, as well as on an unfinished pretrial and operational investigation.

The approval by the Seimas of a conclusion of an ad hoc investigation commission of the Seimas
The Constitutional Court's ruling of 22 December 2016

… the decision of the Seimas, expressed by means of a resolution, to approve the proposals (statements) formulated in a conclusion of an ad hoc investigation commission of the Seimas implies that the Seimas will follow them, *inter alia*, when adopting the respective legal acts.

… it should be noted that the constitutional nature and functions of the Seimas, as the representation of the Nation, through which the Nation executes its supreme sovereign power, and the constitutional principle of responsible governance imply the duty of the Seimas to properly implement the powers granted to it by the Constitution and laws, to implement its functions in observance of the Constitution and law, and to act in the interests of the Nation and the State of Lithuania. Therefore, the Seimas may not approve a conclusion of any possible content made by an ad hoc investigation commission of the Seimas, *inter alia*, any such proposals formulated therein that would be incompatible with the Constitution, *inter alia*, with requirements stemming from the constitutional principles of a state under the rule of law and the separation of powers (as, for instance, in cases where there are proposals that a certain institution of state power, which executes public power, should take over the constitutional powers of another institution of state power or that such powers should be groundlessly interfered with).

The conclusions adopted by an ad hoc investigation commission of the Seimas must be formulated in such a way that would make it possible to adopt lawful decisions, which would comply with the Constitution and the constitutional imperatives arising therefrom. The duty stems for the Seimas from the Constitution, before it decides whether to approve or not to approve a conclusion of an ad hoc investigation commission of the Seimas, or to approve it in part (with reservations), to assess whether the decisions proposed in the said conclusion are compliant with the Constitution, as well as whether the proposals (formulated in the said conclusion of the commission including those whereby certain legal acts are proposed to be adopted or not to be adopted) violate, *inter alia*, the requirements stemming from the constitutional principles of responsible governance, a state under the rule of law, and the separation of powers.

The formation and powers of ad hoc investigation commissions of the Seimas

The Constitutional Court's ruling of 16 May 2019

… under the Constitution, *inter alia*, Article 76 thereof, in order to implement its constitutional powers to collect the necessary exhaustive and objective information, the Seimas may set up ad hoc structural units – ad hoc investigation commissions and assign them to carry out the respective investigation; having regard to the constitutional principles of responsible governance, the separation of powers, a state under the rule of law, and democracy, as well as the striving for an open, harmonious, and just civil society, which is declared in the Preamble to the Constitution, ad hoc investigation commissions of the Seimas, under the Constitution, may be set up for examining not any type of issues, but only special issues, i.e. issues of state importance. The Constitution, therefore, requires that the Seimas, when setting up an ad hoc investigation commission of the Seimas, must determine only such issues of state importance to be assigned to this commission for investigation and only such limits of this investigation so that, when carried out by the commission, this investigation does not harm any of the values consolidated, protected, and defended by the Constitution, and that the powers, laid down in the Constitution and/or laws, of other state and municipal institutions are not taken over or there is not any other form of interference with the exercise of their competence laid down in the Constitution and/or laws, *inter alia*, so that no such decisions are prepared that may be adopted under the Constitution and/or laws only by the state or municipal institutions (or their officials) with the respective competence.

The parliamentary minority

The Constitutional Court's ruling of 18 December 2019

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

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

At the same time, it should be noted that each member of the Seimas represents the whole of the People; when fulfilling his/her constitutional obligation to represent the People, a member of the Seimas participates in performing all constitutional functions of the Seimas and exercises all powers of a member of the Seimas (ruling of 1 July 2004 and the conclusion of 19 December 2017). It should also be noted that the free mandate of a member of the Seimas must be used in such a way that the Seimas could act effectively in the interests of the People and the State of Lithuania, and that it could properly fulfil its constitutional obligation (conclusions of 27 October 2010, 19 December 2017, and 22 December 2017); in performing their functions and implementing state authority, the members of the Seimas must act in the interests of the People and the State of Lithuania, not in their personal or group interests, and they must not make use of their status in order to gain personal advantage for themselves, persons close to them, or other persons (conclusions of 27 October 2010, 3 June 2014, and 19 December 2017).

It should also be noted that participation in the work of the Seimas is a constitutional duty and at the same time a right of a member of the Seimas (decision of 10 February 2005). In view of this, it should also be noted that the members of the Seimas, *inter alia*, those belonging to the parliamentary minority (*inter alia*, those of the parliamentary opposition), must exercise their rights and all the powers of a member of the Seimas responsibly, contributing to the effective implementation by the Seimas of the functions of the parliament of a democratic state under the rule of law.

The guarantees of the parliamentary minority in the formation of the structural units of the Seimas

The Constitutional Court's ruling of 18 December 2019

… the principles of the organisation and operation of the authorities of the State of Lithuania and the concept of a pluralistic parliamentary democracy, which are implied by the Constitution, *inter alia*, the constitutional principle of a state under the rule of law, require, in accordance with Article 76 of the Constitution, the establishment of such a structure and procedure of activities of the Seimas that would ensure the effective protection of the rights of the parliamentary minority, *inter alia*, those of the parliamentary opposition, and guarantees for its activities. This means, *inter alia*, that the principle of proportional representation must be ensured in the formation of the structural units of the Seimas (*inter alia*, committees and commissions of the Seimas) and that the composition of such structural units of the Seimas, *inter alia*, changes in the said composition, must not depend solely on the discretion of the parliamentary majority.

It should be noted that, as stated by the Constitutional Court, the Seimas, when it sets up ad hoc investigation commissions, must also respect the imperative for the protection of the rights of the minority of the Seimas and the minimum requirements for the protection of the opposition of the Seimas, which stem from the Constitution; these requirements imply, *inter alia*, that ad hoc investigation commissions of the Seimas cannot be composed solely of representatives of the political majority of the Seimas, without involving representatives of the minority (opposition) of the Seimas if they so wish (ruling of 4 April 2006). … under the Constitution, *inter alia*, Article 76 thereof, and the constitutional principle of a state under the rule of law, the composition of an ad hoc investigation commission of the Seimas, *inter alia*, of a commission of the Seimas set up before the beginning of impeachment proceedings in order to investigate the reasonableness of charges brought against a specific person, cannot be changed solely at the discretion of the parliamentary majority in the absence of clear and constitutionally justifiable reasons. Such

reasons could include, *inter alia*, the situation where a member of an ad hoc investigation commission of the Seimas, *inter alia*, of a commission of the Seimas set up before the beginning of impeachment proceedings in order to investigate the reasonableness of charges brought against a specific person, in the exercise of his/her functions, uses the free mandate of a member of the Seimas not in the interests of the People and the State of Lithuania, but uses that mandate, *inter alia*, in his/her own personal or group interests.

… the Constitutional Court has mentioned that one of the methods of the parliamentary activities of the opposition could consist of demonstrative, based on the views and political objectives of the opposition, non-participation by members of the Seimas in meetings of the Seimas, meetings of the committees of the Seimas, or meetings of other structural units to which they are appointed as members in accordance with the procedure laid down in the Statute of the Seimas, i.e. obstruction as a type of political protest and a method of parliamentary activity in an attempt to prevent the adoption of a decision that is not acceptable to the minority may, under the Constitution, in certain situations, be regarded as a rather important reason for not attending the said sittings unless such non-attendance is regular (ruling (no KT26-N13/2016) of 5 October 2016). … one of the methods of parliamentary activity may include the refusal of the members of the Seimas belonging to the parliamentary minority, *inter alia*, the parliamentary opposition, to take part in the work of ad hoc structural units of the Seimas (*inter alia*, in the work of ad hoc investigation commissions of the Seimas), thus expressing political protest that, in their view, the decisions of the parliamentary majority unjustifiably restrict the rights and guarantees of the functioning of the parliamentary minority, *inter alia*, those of the parliamentary opposition. It should also be noted that the above-mentioned methods of parliamentary activity do not, in themselves, constitute an obstacle to the exercise by the Seimas of its functions as the parliament of a democratic state under the rule of law.

The establishment of the limits of an investigation carried out by an ad hoc investigation commission of the Seimas

The Constitutional Court's ruling of 12 June 2020

… the Constitution, *inter alia*, Articles 67 and 76 thereof, consolidates the powers of the Seimas, while paying regard, *inter alia*, to the constitutional principles of responsible governance and a state under the rule of law, to establish its structural units, *inter alia*, to form ad hoc investigation commissions of the Seimas and formulate their tasks.

[…]

… the powers of an ad hoc investigation commission of the Seimas may derive only from an act of the Seimas as the representation of the People, i.e. from the expression of the will of the Seimas, but not from the expression of the will or intention of a certain structural unit of the Seimas or a group of members of the Seimas; due to this, it is only the Seimas that may decide on whether or not to set up an ad hoc investigation commission on a certain issue, and it is only the Seimas that may establish the composition, tasks, etc. of this commission, as no one else may express such will for the Seimas; thus, neither any structural unit of the Seimas nor any group of members of the Seimas may express such will (ruling of 4 April 2006).

… under the Constitution, *inter alia*, Articles 67 and 76 thereof, as well as the constitutional principles of responsible governance and a state under the rule of law, the Seimas may set up an ad hoc investigation commission to investigate only a sufficiently defined issue of state importance, i.e. it is necessary to establish such tasks of an ad hoc investigation commission of the Seimas that are necessary for the investigation of the said issue and make clear the limits of the investigative activity of this commission, *inter alia*, what information (from which area) and on what processes (from which area) taking place in the state and society, as well as on what issues (from which area), are to be collected for the Seimas.

Thus, under the Constitution, *inter alia*, Articles 67 and 76 thereof, as well as the constitutional principles of responsible governance and a state under the rule of law, the Seimas must not establish such tasks necessary to investigate an issue of state importance by an ad hoc investigation commission of the Seimas that would not make clear the limits of the investigative activity of this commission and/or that would be impossible to carry out; nor may an issue of state importance assigned to an ad hoc investigation

commission and/or the tasks of the commission necessary to investigate this issue be formulated in such a way as to create the preconditions for the commission at its discretion to choose which investigation tasks it is to carry out and to what extent and, thereby, to determine the limits of its investigation. Otherwise, an ad hoc investigation commission of the Seimas would take over the constitutional powers of the Seimas to define an issue of state importance assigned to such a commission and to establish the tasks necessary for the investigation of this issue.

5.5. THE PROCEDURE OF ACTIVITIES OF THE SEIMAS

5.5.1. General provisions

The structure and procedure of activities of the Seimas are established by the Statute of the Seimas (Article 76 of the Constitution)

The Constitutional Court's ruling of 30 March 2000

Article 76 of the Constitution provides that "The structure and procedure of activities of the Seimas shall be established by the Statute of the Seimas. The Statute of the Seimas shall have the force of a law".

A blanket norm is set down in this article of the Constitution, which permits the Seimas to establish, by itself, its structure, the procedure of its activities, procedures for the presentation of draft laws and other draft legal acts, their deliberation and adoption, as well as the competence of other structural subunits of the Seimas and their interrelations, and to regulate other issues of the functioning of the Seimas. Under Article 76 of the Constitution, this must be established in the Statute of the Seimas, which has the force of a law.

The procedure of activities of the Seimas includes the legislative procedure (Article 76 of the Constitution)

The Constitutional Court's ruling of 18 October 2000

… under Article 76 of the Constitution, the structure and procedure of activities of the Seimas are established by the Statute of the Seimas, which has the force of a law. The establishment of the procedure of activities of the Seimas includes the regulation of the legislative procedure.

The chairperson of sittings of the Seimas (Paragraph 1 of Article 66 of the Constitution)

The Constitutional Court's ruling of 25 January 2001

… under Paragraph 1 of Article 66 of the Constitution, sittings of the Seimas are presided over by the Speaker of the Seimas, or his/her Deputy. The duty of the chairperson of sittings of the Seimas is to preside over sittings of the Seimas and to ensure that the procedure of activities of the Seimas would be adhered to. He/she may not, while making use of the rights of the chairperson of sittings of the Seimas, exert influence on the members of the Seimas regarding decisions which must be adopted, or restrict the rights of the members of the Seimas, or control the content of their statements. Otherwise, the essence of the Seimas as a representative institution and the constitutional principle of the free mandate of a member of the Seimas, which ensures the equality of the members of the Seimas and their opportunity to freely express their will, would be denied.

The continuity of the activities of the Seimas; the sessions of the Seimas; the duty of a member of the Seimas to participate in the work of the Seimas

The Constitutional Court's ruling of 1 July 2004

The Constitution establishes such a framework of state power where each institution of state power performs its functions continuously. Under the Constitution, there may not be any such legal situations where a certain institution exercising state power fails to function.

In its ruling of 24 February 1994, the Constitutional Court held that the Seimas must always ensure that its powers established in the Constitution are performed continuously and that in any situation the

representation of the Nation should be able to constructively, effectively and continuously implement the supreme sovereign power of the Nation.

The continuity of the activity of the Seimas, as the continuously acting representation of the Nation, is ensured, *inter alia*, by the provisions of Article 59 of the Constitution, which provide that the term of powers of the members of the Seimas begins to be counted from the day on which the newly elected Seimas convenes for the first sitting and that the term of powers of the previously elected members of the Seimas expires at the beginning of this sitting.

The Seimas consists of the members of the Seimas – representatives of the Nation. Each member of the Seimas represents the entire Nation. When fulfilling his/her constitutional obligation to represent the Nation, a member of the Seimas participates in performing all constitutional functions of the Seimas and exercises all powers of a member of the Seimas.

The continuity of the activity of the Seimas also implies the continuity of the activity of a member of the Seimas as a representative of the Nation. Under the Constitution, legal acts should establish such a structure and work procedure of the Seimas and such a legal status of a member of the Seimas that would provide for an opportunity for each member of the Seimas to fulfil his/her constitutional obligation to be constantly involved in the work of the Seimas, the representation of the Nation, and to exercise on a continuous basis his/her constitutional powers, as a representative of the Nation.

It needs to be emphasised that the Constitution treats a member of the Seimas as a professional politician, i.e. as such a representative of the Nation whose work at the Seimas is his/her professional activity.

[…]

As already mentioned before, the activity of the Seimas as the representation of the Nation and of the members of the Seimas as representatives of the Nation is continuous. Paragraph 1 of Article 64 of the Constitution provides that every year, the Seimas convenes for two regular sessions – in spring and autumn; the spring session commences on the 10th of March and ends on the 30th of June, and the autumn session commences on the 10th of September and ends on the 23rd of December. The Seimas may decide to prolong a session. Paragraph 2 of Article 64 of the Constitution provides for extraordinary sessions: extraordinary sessions are convened by the Speaker of the Seimas on the proposal of not less than one-third of all the members of the Seimas, or by the President of the Republic in cases provided for in the Constitution.

According to the parliamentary tradition of democratic states, a parliamentary session comprises sittings of the parliament and sittings of parliamentary committees and other structural subunits held in the periods between the sittings of the parliament. A form of sessions of the Seimas is sittings of the Seimas and sittings of structural subunits of the Seimas held in the periods between the sittings of the parliament. It has been held in this ruling of the Constitutional Court that participation at the sittings of the Seimas is a constitutional duty of a member of the Seimas. According to the Constitution, the Seimas has the duty to establish such a legal regulation and act in such a way that ensures the performance of the constitutional duty of the members of the Seimas – the duty to participate at the sittings of the Seimas. This means that the Seimas, *inter alia*, has to establish such a legal regulation that would provide that the non-participation by a member of the Seimas at the sittings of the Seimas is possible only for duly justified exceptional reasons. It should be stressed that the behaviour of a member of the Seimas when he/she does not participate at the sittings of the Seimas without a duly justified exceptional reason should be evaluated as failure to perform the constitutional duty of a member of the Seimas, a representative of the Nation; under the Constitution, such non-participation at the sittings of the Seimas cannot but result in the respective legal consequences (legal responsibility) in respect of the member of the Seimas who does not participate at the sittings of the Seimas without a duly justified exceptional reason. The constitutional mission of the Seimas as the representation of the Nation, the constitutional duty of a member of the Seimas to represent the Nation, and the constitutional legal status of a member of the Seimas also imply that it is necessary to establish such a legal regulation that would facilitate the ensuring of effective control over the participation of the members of the Seimas at the sittings of the Seimas, as well as constant and systematic provision of information to the

public (electorate) about the participation of the members of the Seimas at the sittings of the Seimas and their public votes on issues discussed by the Seimas.

On the other hand, sessions of the Seimas are not a single form of the activity of the Seimas, and participation at sessions of the Seimas is not a single form of the work of a member of the Seimas at the Seimas or his/her parliamentary activity. As already mentioned before, according to the Constitution, the activity of a member of the Seimas as a representative of the Nation is continuous; each member of the Seimas should have the possibility of exercising his/her constitutional duty to continuously participate at the work of the Seimas, the representation of the Nation, and to incessantly perform his/her constitutional powers as a representative of the Nation. Therefore, according to the Constitution, members of the Seimas also perform their duties as representatives of the Nation beyond sessions of the Seimas. The constitutional principle of the continuity of the activity of the Seimas as the representation of the Nation implies that the period between the sessions of the Seimas is not the leave of the members of the Seimas or any other type of their rest. … Paragraph 1 of Article 49 of the Constitution, which provides that every working person has the right to rest and leisure, as well as to annual paid leave, and Paragraph 4 of Article 60 of the Constitution, which provides that the duties, rights and guarantees of the activities of a member of the Seimas are established by law, give rise to the duty of the legislature to establish, by means of a law, the duration and other conditions of the annual paid leave of the members of the Seimas. It should also be noted that the establishment of the leave of a member of the Seimas by means of a law would also ensure that no preconditions are created for the constitutionally unfounded treatment of the period between the sessions of the Seimas as a period equivalent to the leave of the members of the Seimas or any other type of their rest.

5.5.2. The legislation process

The right of legislative initiative (Article 68 of the Constitution); the consideration of draft laws

The Constitutional Court's ruling of 25 January 2001

Article 68 of the Constitution provides that the right of legislative initiative at the Seimas belongs to the members of the Seimas, the President of the Republic, and the Government. The citizens of the Republic of Lithuania also have the right of legislative initiative. Fifty thousand citizens of the Republic of Lithuania who have the electoral right may submit a draft law to the Seimas, and the Seimas must consider it.

The implementation of the right of legislative initiative is the first phase of the legislation process. … Article 68 of the Constitution provides for the subjects who may exercise the right of legislative initiative: members of the Seimas, the President of the Republic, the Government, and 50 000 citizens of the Republic of Lithuania who have the electoral right. In its ruling of 8 November 1993, the Constitutional Court held that the essence and purpose of the right of legislative initiative is to initiate the legislation process. In practice, this right is implemented by submitting a concrete draft law to the parliament. After the subject that is specified in the Constitution submits a draft law, the legislative institution – the Seimas – is under the duty to begin its consideration.

[…]

… in its ruling of 8 November 1993, when analysing the particularities of the phase of the consideration of a draft law, the Constitutional Court noted: "In this phase, remarks, proposals, amendments, and supplements on the draft law submitted by the members of the Seimas are the relevant elements of the phase of consideration; however, they cannot be interpreted as legislative initiative because it has already been implemented. In practice, proposals, amendments, and supplements are submitted until the moment when the law is passed. The procedure for their submission and consideration is regulated by regulatory norms governing the consideration of draft laws. A characteristic feature of this procedure is that it differs in substance from the implementation of the right of legislative initiative. As regards its purpose, the right of legislative initiative is also different from the submission of amendments and supplements to the draft under consideration; after all, they are different parts of the phases of the legislation process."

The competence of the Seimas to establish the procedure for the adoption, signing, publication, and entry into force of laws and other legal acts passed by the Seimas (Item 2 of Article 67 and Article 76 of the Constitution)

The Constitutional Court's ruling of 19 June 2002

Item 2 of Article 67 of the Constitution provides that the Seimas passes laws. Passing laws is one of the most important functions of the Seimas as the representation of the Nation, as well as its constitutional competence. The Seimas, while passing laws (Item 2 of Article 67 of the Constitution) and establishing the structure and procedure of activities of the Seimas in the Statute of the Seimas (Article 76 of the Constitution) has the constitutional competence to particularise and detail the procedure (established in the Constitution) of the signing, publication, and entry into force of laws and other legal acts passed by referendum or by the Seimas. In doing so, the Seimas may not violate the provisions of the Constitution.

The signing, official publication, and entry into force of laws

The Constitutional Court's ruling of 19 June 2002

It is impossible to interpret the procedure (established in the Constitution) of the signing and official publication of laws by dissociating the provisions of Article 71 of the Constitution … from other constitutional provisions, since the norms regulating the signing, official publication, and entry into force of laws, establishing the constitutional powers of the President of the Republic and the Speaker of the Seimas to sign and promulgate laws, as well as the related constitutional powers of the Deputy Speaker of the Seimas, are laid down in various articles of the Constitution.

The procedure for the signing, official publication, and entry into force of laws and other legal acts passed by the Seimas is consolidated not only in Article 71 of the Constitution … but also in Article 70, Item 24 of Article 84, and Article 149 of the Constitution.

[…]

Articles 70 and 71, Item 24 of Article 84, and Article 149 of the Constitution consolidate the procedure for the signing, official publication, and entry into force of laws and other legal acts passed by the Seimas. The observance of such a procedure is an important precondition for ensuring the supremacy of the Constitution.

Paragraph 2 of Article 7 of the Constitution prescribes: "Only laws that are published shall be valid." The signing and official publication of laws, i.e. the promulgation of laws, is the final stage of the legislation process. The signing and official publication of laws is a necessary condition for their entry into force.

Under the Constitution, a law that has not been signed by the official specified in the Constitution may not be officially published and come into force. Also, a law that has been signed by an official who does not have the required constitutional powers may not be officially published and come into force.

The powers of the President of the Republic, the Speaker of the Seimas, and the Deputy Speaker of the Seimas that are related to the signing and official publication of laws (Articles 70 and 71, Item 24 of Article 84, Article 88, Paragraph 1 of Article 89, and Paragraphs 1 and 2 of Article 149 of the Constitution)

The Constitutional Court's ruling of 19 June 2002

In the course of a systemic interpretation of the provisions of Articles 70 and 71, Item 24 of Article 84, as well as Paragraphs 1 and 2 of Article 149 of the Constitution, it becomes clear that the signing and official publication of the laws adopted by the Seimas, as well as laws adopted by referendum, are always linked with the President of the Republic.

Under the Constitution, the signing and official promulgation (within the time limits pointed out in Article 71) of laws adopted by the Seimas as well as laws adopted by referendum is within the competence of the President of the Republic. Exercising the constitutional powers to sign and officially promulgate laws, the President of the Republic takes part in the legislation process (ruling of 19 January 1994).

The President of the Republic also has the right not to sign a law adopted by the Seimas and, within ten days of receiving such a law, on reasonable grounds, to refer it back to the Seimas for reconsideration (Paragraph 1 of Article 71 of the Constitution), i.e. he/she has the right of a delaying veto. The Constitution does not provide that the President of the Republic has the right of a delaying veto in connection with laws passed by referendum or in connection with laws amending the Constitution. Under the Constitution, the President of the Republic has such a right only with regard to laws adopted by the Seimas, with the exception of laws amending the Constitution. While implementing the right of a delaying veto, the President of the Republic may also submit proposals how a law adopted by the Seimas, but not yet signed by the President of the Republic, should be amended or supplemented. Under Paragraph 1 of Article 72 of the Constitution, the Seimas may consider anew and adopt a law referred back by the President of the Republic. The law reconsidered by the Seimas is deemed adopted if the amendments and supplements submitted by the President of the Republic are adopted, or if more than 1/2 of all the members of the Seimas vote for the law or, in cases where such a law is a constitutional law, if not less than 3/5 of all the members of the Seimas vote in favour thereof (Paragraph 2 of Article 72 of the Constitution); the President of the Republic must sign such laws within three days and promulgate them immediately (Paragraph 3 of Article 72 of the Constitution). Such a relation between the powers of the President of the Republic and of the Seimas is an important aspect of the separation of powers consolidated in the Constitution.

Under Article 85 of the Constitution, the President of the Republic, implementing the powers vested in him/her, issues acts-decrees. Under Paragraph 1 of Article 71 of the Constitution, when referring a law passed by the Seimas, within ten days of receiving such a law, back to the Seimas for reconsideration, the President of the Republic must indicate in his/her decree the relevant reasons why the law was referred back to the Seimas. Meanwhile, to propose draft amendments and supplements to a law referred back to the Seimas for reconsideration is not a constitutional duty of the President of the Republic, but his/her constitutional right.

The provisions of Paragraph 1 of Article 71, Item 24 of Article 84, and Paragraph 2 of Article 71 of the Constitution are interrelated. Under the Constitution, the President of the Republic has the right, within ten days of receiving a law passed by the Seimas, to perform one legal action from among those pointed out in the above provisions: either to sign and officially promulgate the law passed by the Seimas (right of promulgation), or to refer it back to the Seimas together with the relevant reasons for reconsideration (right of a delaying veto). To perform one of such legal actions is a constitutional duty of the President of the Republic.

The phrase “the law adopted by the Seimas is neither referred back nor signed by the President of the Republic within the specified period” used in Paragraph 2 of Article 71 of the Constitution is not to be interpreted as meaning that the President of the Republic has the right not to sign and, thus, not to promulgate officially the law passed by the Seimas without referring, on reasonable grounds, the said law back to the Seimas. This phrase means such a factual situation where the President of the Republic, even though he/she has the constitutional duty within ten days of receiving a law passed by the Seimas to sign and officially promulgate it or, on reasonable grounds, to refer such a law back to the Seimas for reconsideration, still, due to some reasons, neither promulgates the law passed by the Seimas nor makes use of the right of a delaying veto. Paragraph 2 of Article 71 of the Constitution provides that in such a case the law is signed and officially promulgated by the Speaker of the Seimas.

Thus, the constitutional powers of the Speaker of the Seimas to sign and officially promulgate laws are linked with strict conditions established in the Constitution: the Speaker of the Seimas signs and officially promulgates laws only if the President of the Republic does not sign and officially promulgate them (Paragraphs 2 and 4 of Article 71 and Paragraph 2 of Article 149 of the Constitution). Besides, the Speaker of the Seimas acquires the constitutional powers to sign and officially promulgate laws adopted by the Seimas only in situations where the President of the Republic not only does not promulgate such laws, but also does not use his/her right of a delaying veto (except laws amending the Constitution). Thus, the powers

of the Speaker of the Seimas to sign and officially promulgate laws are conditioned by respective actions of the President of the Republic.

Under the Constitution, the situations where the President of the Republic neither promulgates laws passed by the Seimas nor makes use of his/her right of a delaying veto should be interpreted depending on whether the powers of the President of the Republic have ceased, or have not ceased, and whether the President of the Republic holds his/her office or is temporarily unable to hold his/her office.

When establishing which official has the constitutional powers to sign and officially promulgate a law passed by the Seimas where such a law was neither signed nor officially promulgated by the President of the Republic and was not referred, on reasonable grounds, back to the Seimas for reconsideration due to the fact that the powers of the President of the Republic have ceased, it is necessary to take account of the provisions of Article 88 of the Constitution.

[…]

If the powers of the President of the Republic cease on the grounds provided for in Items 1 and 2 of Article 88 of the Constitution, a newly elected President of the Republic takes over the powers of the President of the Republic. The newly elected President of the Republic has all the powers that are provided for the President of the Republic in the Constitution and laws, thus, including the powers to sign and officially promulgate such laws, within ten days of receiving them, that were passed by the Seimas at the time when the previous President of the Republic was in office.

If the powers of the President of the Republic cease on the grounds established in Items 3, 4, 5 and 6 of Article 88 of the Constitution, such a legal situation arises where a new President of the Republic is not elected yet. Paragraph 1 of Article 89 of the Constitution provides that in the event that the President of the Republic dies, resigns, or is removed from office according to the procedure for impeachment proceedings, or the Seimas decides that the state of health of the President of the Republic does not allow him/her to hold office, the office of the President of the Republic is temporarily held by the Speaker of the Seimas. In such a case, the Speaker of the Seimas loses his/her powers at the Seimas, and his/her office is temporarily held, on commissioning by the Seimas, by his/her Deputy.

[…]

… the Speaker of the Seimas, if he/she temporarily holds the office of the President of the Republic under Paragraph 1 of Article 89 of the Constitution, performs everything with which the President of the Republic is charged by the Constitution and laws. Consequently, the Speaker of the Seimas has the powers to sign and officially promulgate laws passed by the Seimas within ten days of receiving them or, on reasonable grounds, to refer them back to the Seimas for reconsideration.

It needs to be noted that the Speaker of the Seimas, if he/she temporarily holds the office of the President of the Republic, exercises the constitutional powers of the President of the Republic, but not those of the Speaker of the Seimas, because the Speaker of the Seimas loses temporarily his/her powers in such a situation. Meanwhile, the Deputy Speaker of the Seimas who temporarily holds the office of the Speaker of the Seimas on commissioning by the Seimas also takes over the powers of the Speaker of the Seimas established in Paragraph 2 of Article 71 of the Constitution to sign and officially promulgate laws in cases where the Speaker of the Seimas who temporarily holds the office of the President of the Republic, due to some reasons, neither signs and officially promulgates such laws nor, on reasonable grounds, refers them back to the Seimas for reconsideration.

Attention should be paid to the fact that the phrase “upon commissioning by the Seimas” used in Paragraph 1 of Article 89 of the Constitution means not a general legal regulation, but an individual one meant for such situations where a certain legal act passed by the Seimas commissions a particular Deputy Speaker of the Seimas to temporarily hold the office of the Speaker of the Seimas only for the period until the Speaker of the Seimas resumes his/her duties again.

In the situations provided for in Paragraph 1 of Article 89 of the Constitution, the Speaker of the Seimas holds the office of the President of the Republic until a new President of the Republic is elected and enters office. … After the newly elected President of the Republic takes office, the Speaker of the Seimas stops

holding temporarily the office of the President of the Republic and resumes the duties of the Speaker of the Seimas, and the Deputy Speaker of the Seimas who held the office of the Speaker of the Seimas on commissioning by the Seimas stops holding temporarily the office of the Speaker of the Seimas and resumes the duties of the Deputy Speaker of the Seimas. At this point, it is the newly elected President of the Republic who has the right of the official promulgation of laws passed by the Seimas and that of a delaying veto.

Also, such legal situations are possible where, even though one of the situations provided for in Paragraph 1 of Article 89 of the Constitution is present, but the respective legal fact is not established in accordance with the proper legal procedure (thus, it has not led to the respective legal effects). In such cases, the Speaker of the Seimas, under the Constitution, may not temporarily hold the office of the President of the Republic yet; thus, he/she still does not have the temporary powers of the President of the Republic to sign and officially promulgate laws passed by the Seimas within ten days of receiving them or, on reasonable grounds, to refer them back to the Seimas for reconsideration. …

The Constitution regulates in another manner such legal situations where the President of the Republic, within ten days of receiving laws passed by the Seimas, neither signs and officially promulgates them nor, on reasonable grounds, refers them back to the Seimas for reconsideration not due to the reasons that the powers of the President of the Republic have ceased, but because he/she is temporarily unable to hold office.

[…]

The Constitution regulates in still another manner such legal situations where the President of the Republic, due to some reasons, neither signs and officially promulgates laws passed by the Seimas within ten days of receiving them nor, on reasonable grounds, refers them back to the Seimas for reconsideration even though his/her powers have not ceased and he/she holds his/her office.

… under Paragraph 2 of Article 71 of the Constitution, if a law adopted by the Seimas is neither referred, on reasonable grounds, back to the Seimas for reconsideration nor signed by the President of the Republic within the specified period (i.e. within ten days of receiving the said law, as established in Paragraph 1 of the same article), such a law comes into force after it is signed and officially promulgated by the Speaker of the Seimas. … under Paragraph 4 of Article 71 of the Constitution, if a law adopted by referendum is not signed and promulgated by the President of the Republic within the specified period (i.e. within five days of receiving the said law, as established in Paragraph 3 of the same article), such a law comes into force after it is signed and officially promulgated by the Speaker of the Seimas.

The aforesaid powers are the independent powers of the Speaker of the Seimas to promulgate laws adopted by the Seimas. On the other hand, the powers of the Speaker of the Seimas to sign and officially promulgate laws passed by the Seimas are linked with such a legal situation where the President of the Republic, within ten days of receiving laws passed by the Seimas, neither signs and officially promulgates them nor, on reasonable grounds, refers them back to the Seimas for reconsideration, even though his/her powers have not ceased and he/she holds his/her office. Therefore … the powers of the Speaker of the Seimas are conditioned by respective actions of the President of the Republic. When the President of the Republic neither signs and officially promulgates a law passed by the Seimas within ten days of receiving it nor, on reasonable grounds, refers it back to the Seimas for reconsideration, the Speaker of the Seimas is empowered to promulgate such a law under Paragraph 2 of Article 71 of the Constitution.

At the same time, it needs to be noted that, under Paragraphs 2 and 4 of Article 71 of the Constitution, the Speaker of the Seimas has the powers to promulgate laws adopted by the Seimas in cases where the said laws have not been signed and officially promulgated by the President of the Republic, but he/she may not, on reasonable grounds, refer them back to the Seimas for reconsideration. Therefore, the legal content of the powers of the Speaker of the Seimas to promulgate laws adopted by the Seimas is essentially different from that of the powers of the President of the Republic to promulgate them: the President of the Republic has the right to sign laws passed by the Seimas and to officially promulgate them, while the Speaker of the Seimas has both the right and duty to do so.

In this context, it needs to be emphasised that the Speaker of the Seimas implements the said powers only after the 10- and 5-day periods expire, as indicated in Article 71 of the Constitution.

The powers of the Speaker of the Seimas to sign and officially promulgate a law passed by the Seimas is only a right and duty of the Speaker of the Seimas, i.e. his/her constitutional prerogative, which is realised in the event that during the established time (i.e. within ten days of receiving a law) the President of the Republic neither signs such a law passed by the Seimas nor, on reasonable grounds, refers it back to the Seimas for reconsideration, while the Speaker of the Seimas neither temporarily holds the office of the President of the Republic nor temporarily substitutes for the President of the Republic. The said powers of the Speaker of the Seimas are directly established in the Constitution for the Speaker of the Seimas.

In its rulings, the Constitutional Court has held on more than one occasion that the direct establishment of powers in the Constitution means that a certain state institution may not take over such powers from another state institution, nor may the latter state institution transfer or waive the said powers. Consequently, if the Constitution directly establishes powers for a certain state official, he/she may not take over, transfer or waive such powers except in the cases provided for in the Constitution itself. Thus, the powers of the Speaker of the Seimas established in the Constitution to sign and officially promulgate laws passed by the Seimas in the event that within ten days of receiving such laws the President of the Republic neither signs nor, on reasonable grounds, refers them back to the Seimas for reconsideration may not be transferred or passed over to the Deputy Speaker of the Seimas or any other person if the Speaker of the Seimas has not temporarily lost his/her powers at the Seimas under Paragraph 1 of Article 89 of the Constitution.

[…]

In the event that the Speaker of the Seimas temporarily holds the office of the President of the Republic under Paragraph 1 of Article 89 of the Constitution, the Deputy Speaker of the Seimas temporarily holds the office of the Speaker of the Seimas. In such cases, the Deputy Speaker of the Seimas implements not the constitutional powers of the Deputy Speaker of the Seimas, but those of the Speaker of the Seimas whose office he/she temporarily holds on commissioning by the Seimas. … Under Paragraphs 2 and 4 of Article 71 of the Constitution, at that time, the Deputy Speaker of the Seimas who temporarily holds the office of the Speaker of the Seimas also has the powers to sign and officially promulgate laws if they are not signed and officially promulgated within the established time by the Speaker of the Seimas who temporarily holds the office of the President of the Republic and, due to this reason, has temporarily lost his/her powers at the Seimas.

In cases where the Speaker of the Seimas temporarily acts for the President of the Republic when the President is temporarily abroad or falls ill and, for this reason, is temporarily unable to hold office under Paragraph 2 of Article 89 of the Constitution, the Speaker of the Seimas does not lose his/her powers in the Seimas. Therefore, under the Constitution, the Deputy Speaker of the Seimas may not exercise the constitutional powers of the Speaker of the Seimas in such cases.

[…]

… in addition, the Seimas may not establish any such a legal regulation whereby the Deputy Speaker of the Seimas (either the First Deputy Speaker or any other) is assigned to sign and officially promulgate laws passed by the Seimas if the Seimas has not passed such a legal act (and where this legal act has not come into force in accordance with the established procedure) that would specify the concrete Deputy Speaker of the Seimas who is assigned to temporarily hold the office of the Speaker of the Seimas due to the fact that, on the basis of one of the grounds specified in Paragraph 1 of Article 89 of the Constitution, the Speaker of the Seimas holds the office of the President of the Republic and has temporarily lost his/her powers at the Seimas.

[…]

… under the Constitution, when the Speaker of the Seimas is temporarily absent, his/her constitutional powers, thus, including the powers granted to him/her under Paragraph 2 of Article 71 of the Constitution to sign and officially promulgate laws passed by the Seimas where the President of the Republic, within the specified time, neither signs such laws nor, on reasonable grounds, refers them back to the Seimas for reconsideration may not be taken over either by the First Deputy Speaker of the Seimas or any other Deputy Speaker of the Seimas.

The powers of the President of the Republic to veto a law on the grounds of procedural infringements committed by the Seimas in the course of passing such a law (Paragraph 1 of Article 71 of the Constitution) (for more on the veto right of the President of the Republic, see 6. The President of the Republic, 6.2. The powers of the President of the Republic)

The Constitutional Court's ruling of 22 February 2008

While interpreting the provision "Within ten days of receiving a law adopted by the Seimas, the President of the Republic … shall, upon reasonable grounds, refer it back to the Seimas for reconsideration" of Paragraph 1 of Article 71 of the Constitution, it needs to be noted that the President of the Republic may, in the respective decree, specify various grounds – not only legal, but also economic, political, moral, and expediency grounds, also those that are related to the international obligations of the State of Lithuania, etc. … these grounds do not necessarily have to be linked with the content of the relevant law; they may, in the opinion of the President of the Republic, be also linked with the committed infringements during the procedure of adopting the said law, *inter alia*, with the fact that, while adopting that law, the Seimas did not follow the stages of the legislation process or the rules of legislation that are enshrined in the Constitution and/or the Statute of the Seimas. In such cases, the President of the Republic, while making use of the right of a delaying veto, which is granted to him/her by the Constitution, does not allow such a law to take effect where, in his/her opinion, the said law may be in conflict with the procedure, laid down in the Constitution, for adopting it.

The powers of the Seimas that are related to the adoption of a law vetoed by the President of the Republic (Paragraph 2 of Article 72 of the Constitution)

The Constitutional Court's ruling of 22 February 2008

… if the Seimas does not agree with the reasons of the President of the Republic on the basis of which a certain law adopted by the Seimas is referred back to it for reconsideration after the President of the Republic uses his/her constitutional right of a delaying veto, the Seimas, under Paragraph 2 of Article 72 of the Constitution, may override such a veto of the President of the Republic. Under the Constitution, the veto exercised the President of the Republic is relative as regards laws adopted by the Seimas; such a veto is not absolute.

[…]

… under Paragraph 2 of Article 72 of the Constitution, if a decree of the President of the Republic, whereby a law adopted by the Seimas is, on reasonable grounds, referred back to the Seimas for reconsideration, contains remarks and supplements made by the President of the Republic, the Seimas, after it reconsiders the said law, may pass and make it a law if more than 1/2 of all the members of the Seimas vote for the law (in cases where such a law is a constitutional law – if not less than 3/5 of all the members of the Seimas vote in favour thereof). However, the Seimas, after it reconsiders such a law, may also pass this law by a smaller majority vote by adopting amendments and supplements submitted by the President of the Republic. On the other hand, the Constitution (as well as the provisions of Article 72) does not prohibit a situation where the Seimas, after it reconsiders a law vetoed by the President of the Republic, neither adopts it by the said absolute (qualified) majority of votes of all the members of the Seimas nor adopts it with amendments and supplements submitted by the President of the Republic, but decides to deem it a non-adopted law (for example, if, when reconsidering it, it turned out that the said law has such deficiencies due to which it must be further improved or may not be adopted in general).

Under the Constitution, the Seimas also has the same possibility in cases where a decree of the President of the Republic, whereby a law adopted by the Seimas is, on reasonable grounds, referred back to the Seimas for reconsideration, does not include any proposals on how such a law should be amended or supplemented. In addition, as mentioned before, in such cases the Seimas, according to Paragraph 2 of Article 72 of the Constitution, may override the veto of the President of the Republic.

The legislation process; assessing a draft law

The Constitutional Court's ruling of 29 September 2010

Paragraph 1 of Article 69 of the Constitution stipulates that "Laws shall be adopted at the Seimas according to the procedure established by law".

In its rulings of, *inter alia*, 8 November 1993, 29 May 1997, 18 October 2000, 28 June 2001, 14 January 2002, 19 January 2005, and 22 February 2008, the Constitutional Court revealed the notion of the legislation process and held that: under the Constitution, the legislation process is the whole complex of juridically significant acts necessary for the adoption of a law and performed in a certain rigid sequence of logic and time; such a sequence is, in principle, also entrenched in the Constitution: the realisation of the right of legislative initiative is consolidated in Article 68, the adoption of laws is enshrined in Article 69, and the promulgation of laws and their entry into force is established in Articles 70–72; only with the completion of one stage another one starts in consecutive order; the legislation procedure can be regulated in the Statute of the Seimas, as well as in … laws; it is not allowed to ignore any stage of the legislation process or any rule of the adoption of laws, where the said stages and rules are enshrined in the Constitution, the Statute of the Seimas, or … laws.

… if the Statute of the Seimas or laws prescribe that a certain stage (stages) of the legislation process must include the verification of a draft law, then it is necessary, *inter alia*, to carry out the evaluation of the effectiveness of the regulation of relationships that is sought by the respective law, as well as an assessment whether such a law would give rise to any negative consequences. It would be constitutionally unjustified if there were failure to carry out such verification at a certain stage of the legislation process (*inter alia*, in the course of the realisation of the right of legislative initiative or the adoption of laws) or if such verification were carried out not at the due stage (stages) of the legislation process. … it also needs to be noted that the evaluation of the effectiveness of the regulation of relationships that is sought by the relevant law must be carried out in a comprehensive, objective, and impartial manner and, if necessary, persons possessing expert knowledge must be invited.

In this context, it needs to be noted that, the Constitution, namely the constitutional principle of a state under the rule of law, gives rise to the duty of the legislature to establish, in the Statute of the Seimas and/or laws, such a legal regulation of the legislation process whereby the obligation would be consolidated for the subjects who have the right of legislative initiative and/or for the Seimas, while preparing and/or adopting at the Seimas the legal acts regulating the relationships that can have influence on, *inter alia*, the criminogenic situation and emergence of negative economic consequences, to carry out a proper assessment of a draft law, *inter alia*, as regards the negative consequences that might be caused by the legal regulation laid down by an adopted law. It also needs to be noted that, in its ruling of 19 January 2005, the Constitutional Court held that the compliance of laws and other legal acts with the Constitution is ensured not only by the constitutional control carried out by the Constitutional Court over legal acts adopted by the Seimas, but also by the internal preventive control exercised by the Seimas in the manner established in the Statute of the Seimas, where such control prevents the adoption of laws and other legal acts that could possibly contradict the Constitution or other higher-ranking laws.

The Constitutional Court has held on more than one occasion that the fact that the Seimas, while passing laws, is bound by the Constitution, as well as by its own laws, is an essential element of the constitutional principle of a state under the rule of law.

The procedure for adopting laws (Paragraph 1 of Article 69 and Article 76 of the Constitution)

The Constitutional Court's ruling of 15 February 2013

The fundamental rules for adopting laws are consolidated in Article 69 of the Constitution. Paragraph 1 of Article 69 of the Constitution prescribes: "Laws shall be adopted at the Seimas according to the procedure established by law." The legislation process is the whole complex of juridically significant actions necessary for the adoption of a law and is performed in a rigid sequence of logic and time (*inter alia*, the rulings of 8 November 1993 and 28 September 2011).

When establishing the procedure for adopting laws, the Seimas must pay regard to the norms and principles of the Constitution (ruling of 19 January 2005). Paragraph 1 of Article 69 of the Constitution and the constitutional principle of a state under the rule of law, *inter alia*, give rise to the requirement according to which laws and other legal acts must be adopted according to the procedure that is established in advance and is in compliance with the Constitution, on the condition that this procedure must not be altered after the process of the adoption of those laws has started. It is allowed to deviate from this requirement only when it is necessary in order to secure the protection of other, more important constitutional values.

Paragraph 1 of Article 69 of the Constitution is related to Article 76 thereof establishing that the structure and procedure of activities of the Seimas is established by the Statute of the Seimas, which has the force of a law.

The establishment of the procedure of activities of the Seimas also includes the regulation of the legislation procedure (rulings of 18 October 2000, 14 January 2002, and 19 January 2005). When interpreting the provision of Paragraph 1 of Article 69 of the Constitution together with the provision of Article 76 of the Constitution, the Constitutional Court has stated that both these provisions mean that the legislation procedure may be regulated in the Statute of the Seimas and also in other laws (rulings of 28 June 2001, 14 January 2002, and 19 January 2005).

When the Seimas and each member of the Seimas pass laws and other legal acts, they are bound by the Constitution, constitutional laws, laws, as well as the Statute of the Seimas, which has the force of a law (ruling of 22 February 2008). The duty of the Seimas to follow the rules of passing laws (such rules are defined in the Statute of the Seimas) is a constitutional duty of the Seimas (*inter alia*, the rulings of 8 November 1993, 14 January 2002, and 22 February 2008).

It is not allowed to ignore any stage of the legislation process or any rule of the adoption of laws where the said stages and rules are enshrined in the Constitution, the Statute of the Seimas, or other laws (rulings of 29 September 2010 and 28 September 2011); the necessity to pass laws consistently following the stages and rules of the legislation process stems from the Constitution (ruling of 22 February 2008).

The constitutional duty of the Seimas to follow the aforementioned stages and rules also means that if, under the Statute of the Seimas, it is necessary to receive a conclusion from one of the structural subdivisions of the Seimas (*inter alia*, a committee or commission of the Seimas), it would be constitutionally unjustified that the said conclusion is not submitted because of the fact that this structural subdivision does not fulfil such a duty, is late to fulfil it, etc. (ruling of 22 February 2008).

The jurisprudence of the Constitutional Court follows the legal position that any essential violations of the legislation procedure established in laws and the Statute of the Seimas imply that the provision of Paragraph 1 of Article 69 of the Constitution, according to which laws are adopted at the Seimas according to the procedure established by law, is also violated (rulings of 28 June 2001, 19 January 2005, and 22 February 2008).

The entry into force of laws; the duty of the legislature to provide for a proper *vacatio legis* (Paragraph 1 of Article 70 of the Constitution) (for more on a *vacatio legis* in the sphere of finance law, see 11. The state budget and finances, 11.1. The state budget. The property liabilities of the state. Taxes, the ruling of 15 February 2013)

The Constitutional Court's ruling of 15 February 2013

Paragraph 1 of Article 70 of the Constitution prescribes that laws adopted by the Seimas come into force after they are signed and officially promulgated by the President of the Republic, unless the laws themselves establish a later date for their entry into force.

It needs to be noted that this constitutional provision may not be interpreted as meaning that the legislature is granted an absolutely free discretion to decide whether to postpone the date of the entry into force of a law (beginning of the application of a law).

… the purpose of the principles of legal certainty, legal security, and the protection of legitimate expectations, which arise from the constitutional principle of a state under the rule of law, is securing the trust of a person in the state and in law; these principles imply the duty of the state to secure the certainty and stability of a legal regulation; persons have the right to reasonably expect that their rights acquired under effective legal acts will be retained for the established period of time and will be implemented in reality. While taking account of the aforementioned, the changes in the legal regulation must be made in such a manner that the persons whose legal status is affected by those changes would have a real opportunity to adapt to a new legal situation. Therefore, in order to create the conditions for persons not only to familiarise themselves with a new legal regulation prior to the beginning of its validity, but also to adequately prepare for the expected changes, it might be necessary to establish a later date of the entry into force of the law (beginning of the application thereof).

Thus, when Paragraph 1 of Article 70 of the Constitution is interpreted in the context of the constitutional principle of a state under the rule of law, it needs to be held that, in some situations, the legislature must provide for a sufficient *vacatio legis*, i.e. a time period from the official publication of the law until its entry into force (beginning of its application), within which the interested persons might be able to prepare themselves to implement the requirements arising from that law.

The jurisprudence of the Constitutional Court has pointed to this duty of the legislature on more than one occasion, by relating this duty to the adoption of laws on restructuring the system of social guarantees or individual guarantees (*inter alia*, the rulings of 4 July 2003, 22 October 2007, 22 November 2007, and 6 February 2012); however, the constitutional requirement to provide for a proper *vacatio legis* must also be complied with in adopting other laws that establish duties or limitations with respect to persons. The time period that should be established for each concrete situation must be assessed in view of a number of circumstances: the purpose of the law in the legal system and the nature of the social relationships regulated by that law, the circle of subjects to whom it is applied and their possibilities of preparing for the entry into force of the new legal regulation, as well as other important circumstances, *inter alia*, those due to which the law must come into force as soon as possible. An important public interest or the concern to protect other values consolidated in the Constitution, outweighing the interest of a person to have more time to adapt to the legal regulation establishing new duties or limitations, may determine the speedy entry into force of the law on the day when it is officially published without any term of a *vacatio legis*. Still, it needs to be emphasised that the speedy entry into force of laws establishing duties or limitations with respect to persons should be an exception, based and justified on the grounds of special objective circumstances, rather than a rule.

In this context, it should also be noted that, in the course of making substantial amendments to an effective legal regulation, where the said amendments create consequences unfavourable to the legal situation of persons, it may be necessary to provide not only for a sufficient *vacatio legis*, but also for a certain transitional legal regulation. The legal situation of persons, to whom the new legal regulation is applicable, should be regulated by means of transitional provisions in order that those persons would be given enough time to finish the actions started by them on the basis of the previous legal regulation, because the said persons started those actions expecting that the said previous legal regulation would be stable, and in order that such persons might implement their rights acquired under the previous legal regulation.

The constitutional duty of the Seimas to comply with the procedure for adopting legal acts (Paragraph 1 of Article 69 of the Constitution); the right of initiative to adopt laws and other legal acts of the Seimas (Article 68 of the Constitution)

The Constitutional Court's ruling of 29 June 2018

Paragraph 1 of Article 69 of the Constitution prescribes: "Laws shall be adopted at the Seimas according to the procedure established by law."

In its ruling of 27 April 2016, the Constitutional Court noted that the provisions of Paragraph 1 of Article 69 of the Constitution, under which laws must be adopted at the Seimas according to the procedure

established by law, may not be interpreted only in a linguistic or literal manner as meaning that only laws must be adopted in accordance with the procedure established in legal acts; Paragraph 1 of Article 69 of the Constitution should be interpreted within the context of the overall constitutional legal regulation, by taking into account, *inter alia*, the mission and functions of the Seimas as the legislature, among other things, the fact that the Seimas adopts not only laws, but also other acts of the Seimas; a substantial violation of the procedure laid down in laws or the Statute of the Seimas regarding the adoption of any legal acts of the Seimas (*inter alia*, substatutory legal acts of the Seimas) concurrently means a violation of Paragraph 1 of Article 69 of the Constitution.

It should be noted that the procedure for adopting legal acts of the Seimas other than laws may have certain particularities; however, when establishing it, the legislature is bound by the requirements stemming from the Constitution, *inter alia*, the requirements for the initiative to adopt these legal acts of the Seimas.

As held by the Constitutional Court more than once, the right of legislative initiative is exercised by submitting a draft law to the Seimas; when a subject with the right of legislative initiative at the Seimas submits a draft law, the legislature, i.e. the Seimas, is under the duty to begin deliberations on it (*inter alia*, the rulings of 8 November 1993, 19 January 2005, and 19 November 2015).

The Constitutional Court has noted that, under the Constitution, the will of the Seimas regarding the adoption of decisions may not be expressed otherwise than by vote of members of the Seimas at a sitting of the Seimas and by the adoption of the respective legal act (decision of 15 May 2009 and the conclusions of 27 October 2010 and 3 June 2014).

Consequently, under the Constitution, when the Seimas adopts legal acts other than laws, the exercise of the constitutional powers of the Seimas and those laid down in laws may also be initiated only by submitting the respective draft legal act to the Seimas, and the Seimas is obliged to begin deliberations on it.

Under Article 68 of the Constitution, the right of legislative initiative belongs to the members of the Seimas, the President of the Republic, the Government, as well as 50 000 citizens who have the electoral right. The provisions of Article 68 of the Constitution, as well as the provision of Paragraph 1 of Article 69 thereof, may not be interpreted only in a linguistic or literal manner as meaning that the specified subjects may initiate at the Seimas the adoption of only those legal acts that have the force and form of a law. These constitutional provisions mean that only the subjects specified in Article 68 of the Constitution have the right of initiative to adopt laws and other legal acts of the Seimas, except in the individual cases indicated in the Constitution itself, where the draft legal acts of the Seimas other than draft laws may be submitted to the Seimas on a particular matter by the subjects other than those indicated in Article 68 of the Constitution (as, for instance, under Paragraph 1 of Article 103 of the Constitution, the President of the Supreme Court has the right to nominate candidates for the position of a justice of the Constitutional Court by initiating the adoption of the respective decisions of the Seimas).

The legislation process and its stages; the duty of the Seimas to ensure the publicity and transparency of the legislation process by means of the legal regulation of this process, as well as to create the preconditions for ensuring the quality of laws and other acts of the Seimas (Paragraphs 2 and 3 of Article 5, Paragraph 1 of Article 69, and Article 76 of the Constitution)

The Constitutional Court's ruling of 16 April 2019

… the fundamental rules for adopting laws are consolidated in Article 69 of the Constitution; Paragraph 1 of Article 69 of the Constitution prescribes: "Laws shall be adopted at the Seimas according to the procedure established by law" (*inter alia*, the rulings of 8 November 1993, 28 September 2011, and 15 February 2013).

Paragraph 1 of Article 69 of the Constitution is related to Article 76 of the Constitution, establishing that the structure and procedure of activities of the Seimas are established by the Statute of the Seimas, which has the force of a law (ruling of 15 February 2013). The establishment of the procedure of activities of the Seimas also includes the regulation of the legislation procedure (*inter alia*, the rulings of 18 October 2000,

19 January 2005, and 15 February 2013). When interpreting Paragraph 1 of Article 69 of the Constitution in conjunction with Article 76 of the Constitution, the Constitutional Court has stated that the procedure for adopting laws may be regulated in the Statute of the Seimas and also in other laws (*inter alia*, the rulings of 28 June 2001, 19 January 2005, and 15 February 2013).

When establishing the procedure for adopting laws, the Seimas must pay regard to the norms and principles of the Constitution (rulings of 19 January 2005, 15 February 2013, and 19 November 2015).

… under the Constitution, *inter alia*, Paragraphs 2 and 3 of Article 5 thereof, and the constitutional principles of a state under the rule of law and responsible governance, while implementing its powers to regulate the legislative procedure, which are consolidated in Paragraph 1 of Article 69 and Article 76 of the Constitution, the Seimas must, in the Statute of the Seimas and laws, establish such a legal regulation governing the legislation process that ensures, *inter alia*, the publicity and transparency of this process and creates the preconditions for ensuring the quality of laws and other acts of the Seimas.

The legislation process is the whole complex of juridically significant acts that are necessary for the adoption of a law and are carried out in a certain rigid sequence of logic and time; the following stages of the legislation process are universally recognised: the implementation of the right of legislative initiative, the deliberation of a draft law, the adoption of a draft law, and the promulgation of an adopted law and its entry into force; it is with the completion of one stage that another one starts in consecutive order; the consecutive sequence of stages of the legislation process is essentially consolidated in the Constitution: the implementation of the right of legislative initiative is consolidated in Article 68, the adoption of laws is enshrined in Article 69, and the promulgation of laws and their entry into force is established in Articles 70–72 (*inter alia*, the rulings of 8 November 1993, 22 February 2008, and 19 November 2015). They do not separately identify the stage of the deliberation of draft laws, which is the stage guaranteeing the application of the principles of democracy in the legislation process (rulings of 8 November 1993 and 19 November 2015); however, it is possible to decide on its actual existence from other constitutional norms: Article 71 provides for the right of the President of the Republic to refer a law back "to the Seimas for reconsideration" and Article 72 lays down the right of the Seimas "to consider anew and adopt" a law referred back by the President of the Republic (ruling of 8 November 1993). It should be emphasised that the stage of the deliberation of draft laws is a necessary stage of the legislation process (ruling of 8 November 1993); an important element of this stage is the submission of comments and proposals, as well as amendments or supplements, in relation to a draft law under deliberation (*inter alia*, the rulings of 8 November 1993, 25 January 2001, and 19 January 2005).

… the stage of the deliberation of draft laws is particularly important for the implementation of the … requirements of publicity and transparency of the legislation process and the quality requirements for the adopted laws, which stem from the Constitution, *inter alia*, Paragraphs 2 and 3 of Article 5 thereof, and the constitutional principles of a state under the rule of law and responsible governance. It should be noted that the purpose of the stage of deliberation in the legislation process is to thoroughly examine and assess, at this stage, draft laws submitted to the Seimas and any information concerning them that is significant to the members of the Seimas when they decide on the adoption of the respective laws, among other things, to assess the opinions of the groups of society, the parties concerned, other state or municipal institutions, and persons with specialist knowledge. It should also be noted that, in view of the … requirements of publicity and transparency of the legislation process and the quality requirements for the adopted laws, which stem from the Constitution, the Statute of the Seimas must establish the structural units of the Seimas (*inter alia*, committees and commissions of the Seimas), which would be assigned to consider and assess the received comments and proposals concerning the draft laws under deliberation, as well as it must establish the internal preventive legal measures of the Seimas enabling it to seek that the laws and other legal acts adopted by it are not in conflict with the Constitution and meet other quality requirements for the laws and other acts of the Seimas, which stem from the Constitution.

In this context, it should be noted that, by separating the implementation of the right of legislative initiative from the submission of comments, proposals, amendments, and supplements in the course of

deliberating a draft law, the Constitutional Court has emphasised that they are separate parts of the stages of the legislation process; the purpose of the right of legislative initiative is to initiate the legislation process; it is implemented by submitting a draft law to the Seimas; the submission of comments, proposals, amendments, and supplements at the stage of the deliberation of a draft law should not be considered legislative initiative, as this initiative has already been implemented (*inter alia*, the rulings of 8 November 1993, 25 January 2001, and 19 January 2005).

In the acts of the Constitutional Court, it has also been emphasised on more than one occasion that it is not allowed to ignore any stage of the legislation process or any rule of the adoption of laws consolidated in the Constitution, laws, or the Statute of the Seimas (*inter alia*, the rulings of 29 September 2010, 15 February 2013, and 19 November 2015); the necessity to pass laws consequently following the stages and rules of the legislation process stems from the Constitution (rulings of 22 February 2008, 15 February 2013, and 19 November 2015).

As mentioned before, the Constitution, *inter alia*, Paragraphs 2 and 3 of Article 5 thereof, and the constitutional principles of a state under the rule of law and responsible governance give rise to the duty of the Seimas to establish such a legal regulation governing the legislation process that, *inter alia*, creates the preconditions for ensuring the quality of laws and other acts of the Seimas.

In this context, it should be noted that, as the Constitutional Court noted in its decision of 27 February 2014, the constitutional principles of a state under the rule of law and responsible governance imply that, in cases where in the legislation process it is necessary to rely on special knowledge or special (professional) competence, the Seimas should receive the necessary information from the respective state institutions and take account of it.

It should also be noted that, as the Constitutional Court stated in its ruling of 29 September 2010, the Constitution, specifically the constitutional principle of a state under the rule of law, gives rise to the duty of the legislature to establish, in the Statute of the Seimas and/or laws, such a legal regulation governing the legislation process whereby the duty is consolidated for the subjects with the right of legislative initiative and/or for the Seimas, while preparing and/or adopting at the Seimas the legal acts regulating the relationships that can have influence on, *inter alia*, the criminogenic situation and the increase of negative economic consequences, to carry out a proper assessment of a draft law, *inter alia*, as regards the negative consequences that might be caused by the legal regulation laid down by an adopted law.

… under the Constitution, *inter alia*, Paragraphs 2 and 3 of Article 5 thereof, and the constitutional principles of a state under the rule of law and responsible governance, in order to ensure the quality of the adopted laws, *inter alia*, the compliance of the legal regulation established therein with higher-ranking legal acts, *inter alia* (and first of all), with the Constitution, its clarity and consistency, as well as the coherence and internal harmony of the whole legal system, the legislation process, especially the stage of the deliberation of draft laws, must be regulated so that the preconditions are created for properly assessing the content and consequences of the legal regulation provided for in draft laws while deliberating them. It should be noted that, in order to achieve this objective, the legal regulation governing the legislation process must create the preconditions for receiving, where necessary, *inter alia*, an opinion from persons with specialist knowledge and the respective state institutions, which would be substantiated by the performed comprehensive, objective, and impartial assessment of the draft law under deliberation and the possible … consequences of the envisaged legal regulation, as well as the preconditions for making a responsible and reasoned assessment of this opinion.

As mentioned before, the Constitution, *inter alia*, Paragraphs 2 and 3 of Article 5 thereof, and the constitutional principles of a state under the rule of law and responsible governance give rise to the duty of the Seimas to establish such a legal regulation governing the legislation process that ensures, *inter alia*, the publicity and transparency of this process. In this context, Paragraphs 1 and 2 of Article 33 of the Constitution, which consolidate, *inter alia*, the rights of citizens to participate in the governance of their state and to criticise the work of state institutions or their officials, should also be mentioned.

… it should be noted that, under the Constitution, *inter alia*, Paragraphs 2 and 3 of Article 5 thereof, and the constitutional principles of a state under the rule of law and responsible governance, in order to ensure the publicity and transparency of the legislation process and the said rights of citizens consolidated in Paragraphs 1 and 2 of Article 33 of the Constitution, this process, especially the stage of the deliberation of draft laws, which, as mentioned before, is the stage guaranteeing the application of the principles of democracy in the legislation process, must be regulated so that it creates the possibility for society to participate in the deliberations of draft laws. It should be noted that, in order to reach this objective, such a legal regulation of the legislation process must be established under which the draft laws submitted to the Seimas are made public so that the groups of society and the parties concerned have enough time to access them and to express their opinion, comments, and proposals concerning these draft laws, which would be assessed in a responsible and reasoned manner.

The deliberation of draft laws under urgency procedure

The Constitutional Court's ruling of 16 April 2019

Interpreting the provisions of Paragraph 1 of Article 69 and Article 76 of the Constitution, the Constitutional Court has held that, while passing laws, the Seimas may also deliberate them under the urgency procedure provided for in the Statute of the Seimas (ruling of 18 October 2000). It should be noted that the deliberation of draft laws under urgency procedure implies the shortening of the stages of the legislation process, especially the stage of deliberation; thus, it also implies the limited possibilities for ensuring the fulfilment of the requirements of the publicity and transparency of the legislation process, as well as the quality requirements for laws, which stem from the Constitution, *inter alia*, Paragraphs 2 and 3 of Article 5 thereof, and the constitutional principles of a state under the rule of law and responsible governance.

In the light of this … while regulating the legislative procedure under Paragraph 1 of Article 69 and Article 76 of the Constitution, the Seimas may establish such a legal regulation governing the deliberation of draft laws under urgency procedure according to which this urgency procedure would be applied in special cases, when the political, social, economic, or other circumstances require, as a matter of urgency, to establish a new legal regulation or to amend an effective legal regulation in order to ensure important interests of society and the state or to protect other constitutional values. It should also be noted that the Constitution, *inter alia*, Paragraphs 2 and 3 of Article 5 thereof, and the constitutional principles of a state under the rule of law and responsible governance give rise to the requirement, while regulating the procedure for the deliberation of draft laws under urgency procedure, to create the preconditions for ensuring the internal preventive control of the Seimas over the compliance of laws with the Constitution.

The deliberation of draft laws and other draft acts of the Seimas under special urgency procedure

The Constitutional Court's ruling of 16 April 2019

… implementing the powers to regulate legislative procedure, which are consolidated in Paragraph 1 of Article 69 and Article 76 of the Constitution, the Seimas may also provide for the procedure for the deliberation of draft laws and other draft acts of the Seimas under special urgency procedure in the Statute of the Seimas. It should be noted that this procedure for the deliberation of laws and other acts of the Seimas under special urgency procedure implies that the stages of the legislation process, especially the stage of deliberation, may be shortened even more than while deliberating draft laws and other draft acts of the Seimas under urgency procedure, i.e. the stage of deliberation, which, as mentioned before, is the stage guaranteeing the application of democratic principles in the legislation process, may become only formal. Therefore, the application of the special urgency procedure to the deliberation of laws and other acts of the Seimas provides particularly limited possibilities for ensuring the fulfilment of the requirements of the publicity and transparency of the legislation process and the quality requirements for laws and other acts of the Seimas, which stem from the Constitution, *inter alia*, Paragraphs 2 and 3 of Article 5 thereof and the constitutional principles of a state under the rule of law and responsible governance.

In view of this … it should be noted that, while regulating the legislative procedure under Paragraph 1 of Article 69 and Article 76 of the Constitution, the Seimas may establish such a legal regulation governing the deliberation of draft laws and other draft acts of the Seimas under special urgency procedure according to which this special urgency procedure could be applied only in exceptional constitutionally justifiable cases, where it is necessary to immediately ensure the vital interests of society and the state as, for instance, while imposing or upon the imposition of martial law or a state of emergency, while announcing or upon the announcement of mobilisation, while adopting a decision to use the armed forces in the event of an armed attack, and/or where a particularly urgent need arises to fulfil international obligations, also due to a natural disaster or under other extreme circumstances, or in the event of such a threat to the security of the state and society the elimination of which requires the decisions of utmost urgency by the legislature. It should also be noted that the Constitution, *inter alia*, Paragraphs 2 and 3 of Article 5 thereof, and the constitutional principles of a state under the rule of law and responsible governance give rise to the requirement to create the preconditions, also while regulating the procedure for the deliberation of draft laws and other draft acts of the Seimas under special urgency procedure, for ensuring the internal preventive control of the Seimas over the compliance of laws and other acts of the Seimas with the Constitution. It should be emphasised that a different legal regulation, under which draft laws and other draft acts of the Seimas could be deliberated under special urgency procedure not in exceptional constitutionally justifiable cases or it would be allowed to adopt draft laws or other draft acts of the Seimas, after they are deliberated under special urgency procedure, without ensuring the internal preventive control of the Seimas over their compliance with the Constitution, would be incompatible with the requirements of the publicity and transparency of the legislation process and the quality requirements for laws and other acts of the Seimas, which stem from the Constitution, *inter alia*, Paragraphs 2 and 3 of Article 5 thereof and the constitutional principles of a state under the rule of law and responsible governance.

5.5.3. Other legal acts passed by the Seimas

Substatutory legal acts passed by the Seimas (Paragraph 2 of Article 70 of the Constitution)

The Constitutional Court's ruling of 28 September 2011

… [the] particularities of a substatutory act are also compulsory for other acts adopted by the Seimas, which are specified in Paragraph 2 of Article 70 of the Constitution; substatutory acts of the Seimas may not contradict the Constitution and laws passed by the Seimas, let alone change the norms of laws and their content (ruling of 19 January 1994).

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

[…]

[A resolution of the Seimas] … is a legal act adopted by the Seimas, as the legislature authorised, under the Constitution, *inter alia*, Articles 67 and 70 thereof, to regulate, by means of laws and other legal acts, the most important social relationships. In the hierarchy of legal acts, a resolution of the Seimas has the force of a substatutory legal act.

The Seimas must adopt substatutory legal acts in accordance with the rules for adopting legal acts, as laid down in the Statute of the Seimas (Paragraph 1 of Article 69 of the Constitution)

The Constitutional Court's ruling of 27 April 2016

As noted in the Constitutional Court's ruling of 20 February 2013, not only laws, but also substatutory legal acts of the Seimas, must be adopted in compliance with the rules for adopting legal acts, as defined in the Statute of the Seimas.

It should be noted that the provisions of Paragraph 1 of Article 69 of the Constitution, under which laws must be adopted at the Seimas according to the procedure established by law, may not be interpreted only in a linguistic or literal manner as meaning that only laws must be adopted in accordance with the procedure established in legal acts. Paragraph 1 of Article 69 of the Constitution should be interpreted within the context of the overall constitutional legal regulation, by taking into account, *inter alia*, the mission and functions of the Seimas as legislative power, among other things, the fact that the Seimas adopts not only laws, but also other acts of the Seimas (Articles 67 and 105 of the Constitution). When interpreting Paragraph 1 of Article 69 of the Constitution in the context of the overall constitutional regulation, it should be held that a substantial violation of the procedure laid down in laws or the Statute of the Seimas regarding the adoption of any legal acts of the Seimas (*inter alia*, substatutory legal acts) concurrently leads to a violation of Paragraph 1 of Article 69 of the Constitution.

[…]

As held in the Constitutional Court's ruling of 20 February 2013, the fact that the Seimas does not comply with the Constitution and the Statute of the Seimas in the course of adopting substatutory legal acts means that the constitutional principle of a state under the rule of law, which implies the hierarchy of legal acts, is also violated.

The constitutional duty of the Seimas to comply with the procedure for adopting legal acts (Paragraph 1 of Article 69 of the Constitution); the right of initiative to adopt laws and other legal acts of the Seimas (Article 68 of the Constitution)

See 5.5.2. The legislation process; the ruling of 29 June 2018.

The powers of the Seimas to establish the procedure for adopting acts of the Seimas other than laws (Paragraph 1 of Article 69 and Article 76 of the Constitution)

The Constitutional Court's ruling of 16 April 2019

As the Constitutional Court has noted, the provisions of Paragraph 1 of Article 69 of the Constitution, under which laws must be adopted at the Seimas according to the procedure established by law, may not be interpreted only in a linguistic or literal manner as meaning that only laws must be adopted in accordance with the procedure established in legal acts; Paragraph 1 of Article 69 of the Constitution should be interpreted within the context of the overall constitutional legal regulation, by taking into account, *inter alia*, the mission and functions of the Seimas as the legislature, among other things, the fact that the Seimas adopts not only laws, but also other acts of the Seimas (Articles 67 and 105 of the Constitution) (rulings of 27 April 2016 and 29 June 2018).

In view of this, it should be noted that, while implementing the powers, consolidated in Paragraph 1 of Article 69 and Article 76 of the Constitution, to regulate the legislative procedure, the Seimas must also provide for the legislative procedure of the acts of the Seimas other than laws. As these acts of the Seimas, as a rule, do not establish a new legal regulation or amend an effective legal regulation, it should also be noted that the legislative procedure of the acts of the Seimas other than laws may be simpler, *inter alia*, the same as the procedure for the deliberation of draft laws as a matter of urgency. However, it should be emphasised that, in any case, when regulating the legislative procedure of the acts of the Seimas other than laws, it is necessary to respect the requirements of the publicity and transparency of the legislative procedures and the quality requirements for the acts of the Seimas, which stem from the Constitution, *inter alia*, Paragraphs 2 and 3 of Article 5 thereof, and the constitutional principles of a state under the rule of law and responsible governance.

The concept of a resolution of the Seimas

The Constitutional Court's ruling of 28 August 2020

The Constitutional Court has … held that a resolution of the Seimas is a legal act adopted by the Seimas as the legislature authorised under the Constitution, *inter alia*, Articles 67 and 70 thereof, to regulate, by means of laws and other legal acts, the most important social relationships. In the hierarchy of legal acts, a resolution of the Seimas has the force of a substatutory legal act (ruling of 28 September 2011). It should be noted that such a concept of a resolution of the Seimas implies that, by means of a resolution, the Seimas decides on the most important state governance issues that are assigned to the competence of the Seimas under the Constitution and laws and do not require a legal regulation established by means of a law, but deciding on these issues gives rise to legal consequences, *inter alia*, rights and duties, for other persons.

… the Constitution *expressis verbis* stipulates that the Seimas adopts resolutions on: early elections to the Seimas (Paragraphs 1 and 4 of Article 58); the deprivation of the mandate of a member of the Seimas who either does not take the oath according to the procedure established by law or takes a conditional oath (Paragraph 3 of Article 59); referendums (Item 3 of Article 67); the cessation of the powers of the President of the Republic when the Seimas, taking into consideration the conclusion of the Constitutional Court, by a 3/5 majority vote of all the members of the Seimas, decides that the state of health of the President of the Republic does not allow him/her to hold office (Item 6 of Article 88); the implementation of laws (Item 2 of Article 94); an application to the Constitutional Court, requesting an investigation into the conformity of an act with the Constitution (Paragraph 5 (wording of 21 March 2019) of Article 106).

Thus, in accordance with Paragraphs 1 and 4 of Article 58, Paragraph 3 of Article 59, Item 3 of Article 67, Item 6 of Article 88, and Item 2 of Article 94 of the Constitution, the Seimas adopts resolutions of the Seimas when deciding on the most important state governance issues that are specified in these provisions of the Constitution. Taking into account such an overall constitutional regulation, *inter alia*, the above-mentioned constitutional concept of a resolution of the Seimas, it should be concluded that, in deciding also on other state governance issues assigned to it under the Constitution and laws in cases where the regulation of these issues does not require the adoption of laws and deciding on these issues gives rise to legal consequences for other persons, the Seimas adopts resolutions of the Seimas, although the respective provisions of the Constitution do not explicitly specify the form of the act to be adopted by the Seimas. Under the Constitution, such issues include, *inter alia*: the consent of the Seimas to hold criminally responsible or detain, or to otherwise restrict the liberty of members of the Seimas, the Prime Minister or ministers, or judges (Paragraph 2 of Article 62, Article 100, and Paragraph 2 of Article 114); the revocation of the mandate of a member of the Seimas through the procedure for impeachment proceedings (Item 5 of Article 63 and Article 74); the termination of the powers of a member of the Seimas after declaring the respective election invalid or if the law on elections is grossly violated, or when he/she takes up or does not give up an occupation that is incompatible with the duties of a member of the Seimas (Items 6 and 7 of Article 63); calling elections of the President of the Republic (Item 4 of Article 67); appointing and releasing the heads of state institutions provided for by law (Item 5 of Article 67); giving or not giving assent to the candidate proposed by the President of the Republic for the post of the Prime Minister, giving assent to the release of the Prime Minister from his/her duties (Item 6 of Article 67, Items 4, 5, and 8 of Article 84, and Paragraph 1 of Article 92); giving or not giving assent to the programme of the Government submitted by the Prime Minister (Item 7 of Article 67 and Paragraph 5 of Article 92); expressing no confidence in the Government, the Prime Minister, or ministers (Item 9 of Article 67 and Item 2 of Paragraph 3, as well as Paragraph 4, of Article 101); the appointment of the justices of the Constitutional Court, the justices of the Supreme Court, and the Presidents of these courts (Item 10 of Article 67, Paragraphs 1 and 2 of Article 103, and Paragraph 2 of Article 112); the appointment of the Auditor General and the Chairperson of the Board of the Bank of Lithuania and their release from duties (Item 11 of Article 67, Paragraph 2 of Article 126, and Paragraph 2 of Article 133); calling elections to municipal councils (Item 12 of Article 67); forming the Central Electoral Commission and altering its composition (Item 13 of Article 67); imposing direct rule and

martial law, declaring a state of emergency, announcing mobilisation demobilisation, and adopting a decision to use the armed forces (Item 20 of Article 67, Paragraph 4 of Article 123, Paragraph 1 of Article 142, and Paragraph 1 of Article 144); removing from office 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 according to the procedure for impeachment proceedings (Article 74, Paragraph 2 of Article 86, Item 5 of Article 88, Item 5 of Article 108, and Article 116); dismissing from office officials appointed or elected by the Seimas, with the exception of the persons specified in Article 74 of the Constitution, in cases where the Seimas expresses no confidence in them (Article 75); giving assent to the candidates for the posts of judges of the Court of Appeal and the President of this court (Item 11 of Article 84 and Paragraph 3 of Article 112); giving assent to the candidate for the post of the Prosecutor General of the Republic of Lithuania (Item 11 of Article 84 and Paragraph 5 of Article 118); giving assent to appointing the Commander of the Armed Forces and the Head of the Security Service and releasing them from duties (Item 14 of Article 84); the termination of the powers of a justice of the Constitutional Court on his/her resignation or when he/she is incapable of holding office due to the state of his/her health (Items 3 and 4 of Article 108); approving or overruling the decisions of the President of the Republic on defence against armed aggression, the imposition of martial law, the announcement of mobilisation, and the declaration of a state of emergency (Paragraph 2 of Article 142 and Paragraph 2 of Article 144).

The procedure for adopting resolutions of the Seimas

The Constitutional Court's ruling of 28 August 2020

… one of the democratic principles of the adoption of decisions in the Seimas is the principle of majority (*inter alia*, the rulings of 22 July 1994 and 4 April 2006 and the decision of 15 May 2009). The political will of the majority of the members of the Seimas is reflected in decisions adopted by the Seimas (*inter alia*, the conclusion of 31 March 2004, the ruling of 4 April 2006, and the decision of 15 May 2009). Under the Constitution, the will of the Seimas regarding the adoption of particular decisions may not be expressed otherwise than by vote of members of the Seimas at a sitting of the Seimas and the adoption of the respective legal act (*inter alia*, the decision of 15 May 2009, the conclusion of 3 June 2014, and the ruling 29 June 2018).

As the Constitutional Court has noted, the provisions of Paragraph 1 of Article 69 of the Constitution, under which laws must be adopted at the Seimas according to the procedure established by law, must not be interpreted only in a linguistic or literal manner as meaning that only laws must be adopted in accordance with the procedure established in legal acts; Paragraph 1 of Article 69 of the Constitution should be interpreted within the context of the overall constitutional legal regulation, by taking into account, *inter alia*, the mission and functions of the Seimas as the legislature, among other things, the fact that the Seimas adopts not only laws, but also other legal acts of the Seimas (rulings of 27 April 2016, 29 June 2018, and 16 April 2019). … in deciding on state governance issues assigned to it under the Constitution and laws in cases where the regulation of these issues does not require the adoption of laws and deciding on these issues gives rise to legal consequences for other persons, the Seimas adopts resolutions of the Seimas.

In view of this, it should be noted that the provisions of Paragraph 2 of Article 69 of the Constitution must not be interpreted only in a linguistic or literal manner as meaning that only laws are deemed to be adopted if a majority of the members of the Seimas participating in the sitting have voted for them. In accordance with the above-mentioned democratic principle of decision-making in the Seimas by majority, under Paragraph 2 of Article 69 of the Constitution, a majority of the members of the Seimas participating in the sitting is also necessary for the adoption of resolutions of the Seimas by means of which the Seimas decides on state governance issues assigned to it under the Constitution and laws and deciding on these issues gives rise to legal consequences for other persons, unless the Constitution explicitly specifies a different majority necessary for the adoption of the respective decision of the Seimas (for example, under Article 74 of the Constitution, the Seimas may, through impeachment proceedings, by a 3/5 majority vote of

all its members, remove 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 revoke the mandate of a member of the Seimas; under Article 75 of the Constitution, the officials appointed or elected by the Seimas, with the exception of the persons specified in Article 74 of the Constitution, are dismissed from office when the Seimas expresses no confidence in them by a majority vote of all the members of the Seimas).

… the rule for adopting, by a majority vote of the members of the Seimas participating in the sitting of the Seimas, resolutions of the Seimas by means of which the Seimas decides on state governance issues assigned to it under the Constitution and laws in cases where deciding on these issues gives rise to legal consequences for other persons is explicitly laid down in Paragraph 5 of Article 92 of the Constitution, according to which a new Government receives the powers to act after the Seimas gives assent to its programme by a majority vote of the members of the Seimas participating in the sitting.

Resolutions of the Seimas written down in the minutes

The Constitutional Court's ruling of 28 August 2020

… under the Constitution, by means of the resolutions of the Seimas that are written down in the minutes of a sitting of the Seimas, the Seimas may not decide on any state governance issues that are assigned to the Seimas under the Constitution and laws in cases where the regulation of these issues does not require the adoption of laws and deciding on these issues gives rise to legal consequences for other persons.