7. THE GOVERNMENT

7.1. THE CONSTITUTIONAL STATUS OF THE GOVERNMENT

The constitutional status of the Government

The Constitutional Court's ruling of 10 January 1998

In the Lithuanian system of the institutions of executive power, the Government, which implements state governance, plays an exceptional role. The Government is a collegial institution of general competence. The Government consists of the Prime Minister and ministers. Article 94 of the Constitution provides that the Government: manages national affairs, protects the territorial inviolability of the Republic of Lithuania, and guarantees state security and public order; executes laws, the resolutions of the Seimas on the implementation of laws, as well as the decrees of the President of the Republic; coordinates the activities of ministries and other establishments of the Government; prepares a draft state budget and submits it to the Seimas; executes the state budget and submits to the Seimas a report on the execution of the budget; prepares draft laws and presents them to the Seimas for consideration; establishes diplomatic ties and maintains relations with foreign states and international organisations; and performs other duties prescribed to the Government by the Constitution and other laws. The scope of the powers of the Government is defined by the Constitution. The Government is jointly and severally responsible to the Seimas for the general activities of the Government. Ministers, in directing the areas of governance assigned to them, are responsible to the Seimas and the President of the Republic, and are directly subordinate to the Prime Minister.

The accountability of the Government to the representation of the Nation

The Constitutional Court's ruling of 24 December 2002

Under the Constitution, the Seimas exercises parliamentary control over the Government. At the request of the Seimas, the Government or individual ministers must give an account of their activities to the Seimas (Paragraph 1 of Article 101 of the Constitution). Thus, the separation of powers in the Constitution also implies the accountability of the Government, a collegial institution of executive power, to the legislature, the representation of the Nation.

The constitutional status of the Government

The Constitutional Court's ruling of 13 December 2004

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

[…]

The Government is a collegial institution of executive power (ruling of 10 January 1998). Article 91 of the Constitution provides that the Government of the Republic of Lithuania consists of the Prime Minister and ministers; under Paragraph 1 of Article 98 of the Constitution, ministers, *inter alia*, head their respective ministry. According to Item 3 of Article 94 of the Constitution, the Government coordinates the activities of the ministries and other establishments of the Government. The Constitution specifies only one position of a minister – the Minister of National Defence (Paragraph 1 of Article 140 of the Constitution); therefore, according to the Constitution, the Ministry of National Defence may not be absent in Lithuania. When interpreting the legal regulation established in Item 3 of Article 94 of the Constitution, in its ruling of 23 November 1999, the Constitutional Court held that the Constitution does not reveal what establishments are considered "establishments of the Government"; moreover, the Constitution does not specify what legal

status of the aforementioned government establishments is. It is the legislature exercising discretion in this area (limited by the Constitution) that must establish this. On the other hand, certain government institutions are specified in the Constitution; for example, the institution of the representative of the Government, which has the power to supervise whether municipalities observe the Constitution and laws and whether they execute the decisions of the Government, is consolidated in Paragraphs 2 and 3 of Article 123 of the Constitution. In this context, it should also be mentioned that Paragraph 1 of Article 123 of the Constitution provides that, at higher-level administrative units, governance is organised by the Government according to the procedure established by law; thus, the legislature has the duty not only to establish higher-level administrative units, but also to provide for the government institutions through which the Government would organise governance at higher-level administrative units.

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

The constitutional status of the Government; under the Constitution, a situation in which there is no operating Government in the state is impermissible

The Constitutional Court's ruling of 28 August 2020

… the Constitutional Court has held that, in the Lithuanian system of the authorities of the executive branch, the Government, which carries out state governance, has a special place (*inter alia*, the rulings of 10 January 1998, 13 December 2004, and 8 March 2018). … the Government is an authority of executive power ensuring the functioning of the state. The Government is a collegial authority of executive power and implements state governance (*inter alia*, the rulings of 13 May 2010, 2 March 2018, and 25 November 2018).

Under the Constitution, the Government exercises executive power on a continuous basis (ruling of 10 January 1998). Under Article 94 of the Constitution, the Government: manages national affairs, protects the territorial inviolability of the Republic of Lithuania, and guarantees state security and public order (Item 1); executes laws, the resolutions of the Seimas on the implementation of laws, as well as the decrees of the President of the Republic (Item 2); coordinates the activities of ministries and other establishments of the Government (Item 3); prepares a draft state budget and submits it to the Seimas; executes the state budget and submits to the Seimas a report on the execution of the budget (Item 4); prepares draft laws and presents them to the Seimas for consideration (Item 5); establishes diplomatic ties and maintains relations with foreign states and international organisations (Item 6); and discharges other duties prescribed to the Government by the Constitution and other laws (Item 7). The powers of the Government are also established in Item 3 of Article 84, Paragraph 1 of Article 89, Paragraph 1 of Article 123, Paragraph 1 of Article 128, etc. of the Constitution.

In view of the foregoing, it should be held that the Constitution does not allow a situation in which there is no operating Government, as a collegial executive authority ensuring the functioning of the state and continuously implementing state governance, i.e. a situation in which there is neither the Government authorised to act under the Constitution nor the Government assigned, under the Constitution, to perform duties at least on a temporary basis.

7.2. THE FORMATION OF THE GOVERNMENT. THE RETURN OF POWERS. RESIGNATION

Granting the Government the powers to act; the legal meaning of a programme of the Government (Item 7 of Article 67 and Paragraph 5 of Article 92 of the Constitution)

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

The basis of a programme of the Government is the programmes of the political parties that have won the election; however, the provisions of these programmes acquire a legal meaning only through a programme of the Government and oblige both the Government and the majority of the Seimas supporting it to act respectively. Such recognition of the legal meaning of a programme of the Government is a characteristic feature of parliamentary democracy. The said feature is consolidated in the norms of Item 7 of Article 67 and Paragraph 5 of Article 92 of the Constitution.

This is the reason why the President of the Republic must appoint the Prime Minister who is supported by the majority of the Seimas and must approve such a Government the programme of which can be approved by a majority vote of the members of the Seimas who take part in the sitting. Otherwise, the institution of executive power ensuring the functioning of the state would never be formed. Attempting to gain the confidence of the Seimas, in foreseeing the directions of its activities for a certain time period, the Government must take into consideration the possible approval or non-approval by members of the Seimas. By expressing its confidence in a 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.

Thus, a programme of the Government should be deemed a legal document wherein the main guidelines for the activities of the state for a certain time period are set out. Such a legal document must be published in the official gazette *Valstybės žinios*. Furthermore, the significance of the said programme as a legal form determining the actions of the institutions that form the Government and as a legal form ensuring interaction between the Government and those institutions is of no less importance.

[…]

Under the Constitution, the Government exercises executive power on a continuous basis. The activities of the Government are based on the confidence of the Seimas that has approved the programme of the Government.

The programme of the Government is compulsory to the Government for the whole term of its powers. Requesting the powers to act, a new Government submits its programme to the Seimas for consideration. 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.

The formation of the Government

The Constitutional Court's ruling of 10 January 1998

The Government – a collegial institution of executive power – is formed by the Seimas and the President of the Republic; however, in forming the Government, the role and tasks of the Seimas and the President of

the Republic are different. The President of the Republic participates in this process as the Head of State, fulfilling the functions provided for in the Constitution; while the Seimas, to which the Government is responsible, acts as the representation of the nation.

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. …

The relationships between the President of the Republic and the Government are regulated by the norms of the Constitution that provide that the President of the Republic, on the assent of the Seimas, appoints the Prime Minister; the President of the Republic assigns the Prime Minister to form the Government and approves the composition of the formed Government. The President of the Republic, on the assent of the Seimas, releases the Prime Minister from duties; the President of the Republic accepts the powers returned by the Government after the election of a new Seimas and assigns the Government to exercise its duties until a new Government is formed, accepts the resignation of the Government and, where necessary, assigns it to continue to exercise its duties, or assigns one of the ministers to exercise the duties of the Prime Minister, until a new Government is formed. The President of the Republic, on the resignation of the Government or after it returns its powers, within 15 days, proposes the candidate for the post of the Prime Minister for consideration by the Seimas, etc.

… According to the European constitutional tradition, the President appoints such a person as the head of the Government who is supported by the parliamentary majority. The said constitutional practice is also observed in Lithuania.

It appears from an analysis of the powers of the Seimas and those of the President of the Republic in the sphere of forming the Government that the main task of the activities of the President of the Republic in this process is to guarantee interaction between the institutions of power. In the course of forming the Government, the President of the Republic should be bound by his/her duty to act, first of all, in such a way that an efficient Government is formed, i.e. the one that has the confidence of the Seimas.

Therefore, based on the principles of parliamentary democracy, which are established in the Constitution, it should be presumed that the President of the Republic cannot freely choose the candidates for the posts of the Prime Minister or ministers, since, in all cases, the appointment of the said officials depends on the confidence or distrust expressed by the Seimas on this matter. At the same time, it is impossible to ignore the fact that the President of the Republic, as part of executive power, has certain political possibilities of influencing the formation of the personal structure of the Government.

The return of the powers of the Government after the election of the President of the Republic (Articles 80 and 82, as well as Paragraph 4 of Article 92, of the Constitution)

The Constitutional Court's ruling of 10 January 1998

Analysing the issue of the return of the powers of the Government, the Constitutional Court notes that the norms of Paragraph 4 of Article 92 of the Constitution may not be interpreted in isolation from other norms of the Constitution. The constitutional norms that regulate different aspects of the formation of the Government, as well as interrelations among the Seimas, the President of the Republic, and the Government, are set out in several chapters and articles of the Constitution. The Constitution is an integral act; therefore, in this particular case, priority should be given to a systemic interpretation. When the content of the norm of Paragraph 4 of Article 92 of the Constitution is interpreted, the purpose of adopting the said norm should be taken into consideration.

Article 82 of the Constitution prescribes: "On the day following the expiry of the term of office of the President of the Republic, the elected President of the Republic shall take office after he, in Vilnius, in the presence of the representatives of the Nation – the Members of the Seimas, takes an oath to the Nation to be faithful to the Republic of Lithuania and the Constitution, to conscientiously fulfil the duties of his office, and to be equally just to all."

In the countries where the President is elected in a general election, there is, as a rule, a certain time period between the announcement of the election results and the beginning of the performance of duties by the President. During the said period, the outgoing President remains in office and the Parliament, as well as the Government, which has the confidence of the Parliament and in the formation of which the Head of State participated, continues to perform its functions. Such a sufficiently long pause is understandable, because the President who is leaving his/her office needs some time to prepare for transferring the duties of the Head of State, while the new President needs some preparation for accepting such duties.

The aforementioned time period is also established in Article 80 of the Constitution of the Republic of Lithuania. During this time period, the outgoing President of the Republic continues to be the Head of State. The Head of State has all powers vested in him/her under the Constitution. He/she is the only person who can exercise them. From the announcement of the final results of the election until taking an oath, the new elected President of the Republic has no powers of the Head of State yet. The Government, in forming which the outgoing President of the Republic participated, continues to exercise its powers.

After the new President of the Republic takes an oath, the powers of the former President of the Republic cease and, at the same time, the relationship of the Government cease with the former Head of State, who participated in forming that Government. The Constitutional Court, referring to the analysis of constitutional norms, draws the conclusion that the Government must return its powers to the newly elected President of the Republic after he/she takes an oath and takes office.

… interpreting the norms of Articles 80 and 82 and Paragraph 4 of Article 92 of the Constitution, the Constitutional Court draws the conclusion that the powers of the Government should be returned to the President of the Republic on the same day when he/she takes office. This interpretation is based on the fact that the Constitution does not provide for any other time period.

The concept and grounds of the resignation of the Government (Paragraphs 2 and 3 of Article 101 of the Constitution)

The Constitutional Court's ruling of 10 January 1998

The grounds of the resignation of the Government are consolidated in Paragraph 3 of Article 101 of the Constitution. The said paragraph provides that the Government must resign in the following cases:

(1) when the Seimas twice in succession does not give its assent to the programme of the newly formed Government;

(2) when the Seimas, by a majority vote of all the members of the Seimas and by secret ballot, expresses no confidence in the Government or in the Prime Minister;

(3) when the Prime Minister resigns or dies;

(4) after the election to the Seimas, when a new Government is formed.

In addition, when more than half of the ministers are replaced, the Government that does not once again receive its powers from the Seimas must resign (Paragraph 2 of Article 101 of the Constitution).

The Constitutional Court notes that this list of the grounds for the resignation of the Government is final.

It is clear that one of the main reasons for the resignation of the Government is either the loss of or failure to gain the confidence of the Seimas. The Constitution, however, provides for various forms of expressing no confidence: first, the Seimas may express no confidence directly; second, it may express no confidence by giving, twice in succession, no assent to the programme of a newly formed Government; third, the Government must once again, i.e. anew, receive its powers from the Seimas. Finally, the other two cases

presume that the Government loses the confidence of the Seimas, i.e. it loses its powers to act: first, when the Prime Minister resigns or dies and, second, after the election of the Seimas.

Thus, the resignation of the Government means the end of its activities. After the resignation of the Government, the procedure for forming a new Government begins; however, in the case provided for in Item 4 of Paragraph 3 of Article 101 of the Constitution, such a procedure begins prior to the resignation.

The differences between the legal effects of the resignation of the Government and those of the return of the powers of the Government; the receipt of powers once again after the election of the President of the Republic (Articles 84, 92, and 101 of the Constitution)

The Constitutional Court's ruling of 10 January 1998

In addition to the notion "the resignation of the Government", the notion "the return of the powers of the Government" is also used in the Constitution. … the grounds for the resignation of the Government are exhaustively listed in Article 101 of the Constitution. The essence of the grounds for the resignation of the Government is either the loss of or failure to gain the confidence of the Seimas. The return of the powers of the Government is provided for in two cases: first, after the election of the Seimas and, second, after the election of the President of the Republic (Paragraph 4 of Article 92 of the Constitution).

Thus, the conclusion may be drawn that the expiry of the powers of one of the subjects who participates in forming the Government entails the necessity of returning the powers of the Government. The constitutional norms, however, give a different meaning to the change of the aforesaid subjects and their influence on the formation of the Government. For instance, after an election of the Seimas, the Government must not only return its powers, but also resign (Item 4 of Paragraph 3 of Article 101 of the Constitution). Thus, in this case, the return of the powers is the first step towards the compulsory resignation of the Government imperatively prescribed by the Constitution. It is evident that, after an election of the Seimas, the subject that expressed confidence in the Government and granted it the powers to act is clearly missing; therefore, the Government must resign.

After a new Seimas is elected, the President of the Republic, on the basis of Item 6 of Article 84 of the Constitution, accepts the powers returned by the Government and assigns it to exercise its duties until a new Government is formed. Within 15 days, the President of the Republic proposes the candidate for the post of a new Prime Minister for consideration by the Seimas. The formation of a new Government is, thus, begun. After a new Government is formed, the Government that has returned its powers resigns (Item 4 of Paragraph 3 of Article 101 of the Constitution).

After an election of the President of the Republic, the Government also returns its powers to the newly elected President of the Republic. However, the norms of the Constitution do not prescribe that the Government must resign in such a situation. This is due to the fact that, after a new Head of State takes office, the confidence of the Seimas in the Government remains intact. Therefore, in the case of the return of powers after the election of a new President of the Republic, the same Government must be assigned by the Head of State to continue to exercise its functions. In the case of the resignation of the Government, the President of the Republic may assign another member of the Government to exercise the functions of the Prime Minister.

Thus, the Constitutional Court emphasises that there are no grounds for treating the notions "the resignation of the Government" and "the return of the powers of the Government" as identical. They relate to different legal situations. This also determines different legal consequences.

Item 8 of Article 84 of the Constitution provides that the President of the Republic, on the resignation of the Government or after it returns its powers, within 15 days, proposes the candidate for the post of the Prime Minister for consideration by the Seimas. The Constitutional Court notes that the essence of this norm is the prerogative of the President of the Republic to submit to the Seimas the candidate for the post of a new Prime Minister for consideration in due time. The notions "resignation" and "the return of the powers" used therein should be interpreted only with respect to the aforesaid circumstances.

It should be noted that the constitutional regulation of the return of the powers of the Government after the election of the President of the Republic of Lithuania reminds us, at least partly, of the constitutional tradition of the Third French Republic, when the Government would resign after a parliamentary election, as well as after a presidential election. The resignation after a presidential election was called "resignation for the sake of courtesy" *(demission de courtoise)*. After its "resignation for the sake of courtesy", the Government used to be approved once again. This procedure is said to be meaningful due to the relation of the Government with the Head of State and that it reflects certain tendencies in the development of the model of government.

Although the Constitution of the Republic of Lithuania treats the return of powers in a somewhat different way, it undoubtedly expresses respect for the institution of the Head of State and recognises the importance of relationships between the President of the Republic and the Government. It is clear from an analysis of the content of Articles 84, 92, and 101 of the Constitution that such a return of powers does not imply the resignation of the Government. Otherwise, the Constitution would directly stipulate that, after the election of a new President of the Republic, the Government must return its powers and resign. Having returned its powers, the Government remains legitimate.

The procedure for the return of powers, however, is not merely an expression of interinstitutional courtesy: it provides the President of the Republic with the possibility of verifying whether the Seimas continues to have confidence in the Government. The President of the Republic, on the basis of Article 92 and Item 8 of Article 84 of the Constitution, taking account of the tradition of parliamentary democracy, under the procedure established in Item 8 of Article 84 of the Constitution, proposes the candidate for the post of the Prime Minister of the Government that has returned its powers for consideration by the Seimas. After the Seimas approves the candidate for the post of the Prime Minister and the President of the Republic appoints the Prime Minister and approves the composition of the Government proposed by the Prime Minister, the Government once again receives its powers to act, unless more than half of the ministers are replaced.

If the Seimas does not approve the candidate for the post of the Prime Minister, the Government must resign (Item 2 of Paragraph 3 of Article 101 of the Constitution). This would constitute a constitutional ground for the procedure of beginning the formation of a new Government.

The constitutional status of the Government; the receipt of the powers to act; parliamentary supervision over the activities of the Government; the receipt of powers once again after more than half of the ministers are replaced (Articles 92 and 101 of the Constitution)

The Constitutional Court's ruling of 20 April 1999

Paragraph 2 of Article 101 of the Constitution prescribes: "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."

It is possible to reveal the content of this norm of the Constitution only by taking into account the procedure for forming and empowering the Government as consolidated in the Constitution, the legal regulation governing how the Government once again receives its powers to act, and the particularities of legal interrelationships between the Seimas and the Government.

Article 5 of the Constitution provides that, in Lithuania, state power is executed by the Seimas, the President of the Republic and the Government, and the judiciary. This provision of the Constitution constitutes the grounds for the separation and balance of the powers of the state. The Government is a collegial institution of general competence carrying out state governance. According to Article 91 of the Constitution, the Government of the Republic of Lithuania consists of the Prime Minister and ministers. The Prime Minister is appointed and released by the President of the Republic on the assent of the Seimas (Paragraph 1 of Article 92 of the Constitution). Under Paragraph 3 of Article 92 of the Constitution, the Prime Minister, within 15 days of his/her appointment, forms and presents to the Seimas the Government,

approved by the President of the Republic, and submits the programme of the formed Government for consideration by the Seimas.

The personal composition of the Government is formed both 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 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 may 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 parliamentary supervision over the Government. 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.

In order to determine how the replacement of ministers under Paragraph 2 of Article 101 of the Constitution should be understood, the circumstance of essential importance is that 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 decide 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 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.

As mentioned before, the Government consists of the Prime Minister and ministers. A minister heads the respective ministry; he/she is responsible to the Seimas and the President of the Republic and is directly subordinate to the Prime Minister. Even though ministers head their respective ministry and are responsible for individual areas of governance, however, the general affairs of state governance are decided by the Government at its sittings by adopting resolutions by a majority vote of all the members of the Government (Paragraph 1 of Article 95 of the Constitution).

On the grounds of a systemic interpretation of the said provisions of the Constitution, it is possible to draw the conclusion that the fact that, by the assent of the Seimas to the programme of the Government, the Government receives its powers to act consolidates the principle of expressing confidence in the Government *in corpore* by the Seimas. Changing the area of governance entrusted to a minister is important from the aspect of his/her responsibility. From the standpoint of interrelationships 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 such changes result in more than half of new ministers 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. Therefore, in the opinion of the Constitutional Court, the provision of Paragraph 2 of Article 101 of the Constitution relating to the replacement of ministers should be understood as meaning that a new person who is not a member of the Government is appointed instead of the head of a ministry who was released from duties or as the head of a newly established ministry.

In deciding whether more than half of the ministers were replaced in the Government, it is also very important to establish the number of ministers from which the replacement of ministers must be counted. In such a case, account should be taken of the fact that, under Paragraph 1 of Article 98 of the Constitution, ministers head their respective ministry. In view of this, the conclusion should be drawn that the number of ministers is determined by the number of ministries that is prescribed by the Law on the Government.

The principle of the responsibility of the Government to the Seimas

The Constitutional Court's ruling of 28 August 2020

… on the basis of the competence of state institutions as established by the Constitution, the model of government of the State of Lithuania should be categorised as a parliamentary republican form of government. In view of this, the Constitution establishes the principle of the responsibility of the Government to the Seimas. That principle is reflected, *inter alia*, in Paragraph 1 of Article 96 of the Constitution, which states that the Government is jointly and severally, i.e. *in corpore*, responsible to the Seimas for the general activities of the Government.

The constitutional principle of the responsibility of the Government to the Seimas is also reflected in the constitutional provisions establishing the power of the Seimas to exercise parliamentary control over the Government. The Constitution lays down various ways in which the Seimas implements the supervision of the Government, as, for instance: the Seimas, under Item 9 of Article 67 of the Constitution, supervises the activities of the Government; 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) (ruling of 20 April 1999).

… the constitutional provisions consolidating the principle of the responsibility of the Government to the Seimas and the respective powers of the Seimas to exercise parliamentary control over the Government should be interpreted in the light of, *inter alia*, the parliamentary republican form of government, which is established in the Constitution, also in the light of the constitutional concept of pluralistic parliamentary democracy, which is enshrined in the Constitution and implies, *inter alia*, political pluralism in the parliament of a democratic state under the rule of law, as well as in the light of the requirement, arising from Paragraphs 2 and 3 of Article 5 of the Constitution and from the constitutional principles of responsible governance and a state under the rule of law, that the Seimas must properly implement the constitutional powers of supervision over the Government, *inter alia*, in adopting lawful and reasonable legal acts.

… The principle of the responsibility of the Government to the Seimas is reflected in the provisions of Item 7 of Article 67, Paragraph 5 of Article 92, and Paragraph 2 of Article 101 of the Constitution, which … regulate the granting of powers (*inter alia*, the granting of powers once again) to the Government and which also consolidate the powers of parliamentary control over the Government carried out by the Seimas. As noted by the Constitutional Court, the constitutional regulation of the powers of state authorities and their interrelationships in 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 (ruling of 20 April 1999).

Granting the Government the powers to act (Item 7 of Article 67 and Paragraph 5 of Article 92 of the Constitution)

The Constitutional Court's ruling of 28 August 2020

Item 7 of Article 67 of the Constitution lays down the powers of the Seimas to consider the programme of the Government, presented by the Prime Minister, and to decide whether to assent to it. Closely related to this provision is Paragraph 5 of Article 92 of the Constitution, which provides that 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.

Thus, Item 7 of Article 67 and Paragraph 5 of Article 92 of the Constitution consolidate the institution of granting powers to the Government.

… Interpreting the provisions of Item 7 of Article 67 and Paragraph 5 of Article 92 of the Constitution, the Constitutional Court has held the following:

– granting powers to the Government to act and exercising control over its activities are an important sphere of the competence of the Seimas; the Seimas, by giving assent to a programme of the Government, grants powers to the Government to act; the constitutional norms regulating the activity of the Government and consolidating the principle of the responsibility of the Government to the Seimas are, thus, implemented; it is established in the constitutional structure of the branches of power that only such a Government may exercise its powers that has the confidence of the Seimas; the legal form of granting such powers is voting in the Seimas for giving assent to a programme of the Government; under the Constitution, the activities of the Government are based on the confidence of the Seimas that has given its assent to the programme of the Government (ruling of 10 January 1998);

– the personal composition of the Government is formed both 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"; assent to the programme of the Government means that the Government is empowered to implement the provisions of its programme (ruling of 20 April 1999);

– 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 decide 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 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, by the assent of the Seimas to the programme of the Government, the Government receives its powers to act consolidates the principle of expressing confidence in the Government *in corpore* by the Seimas (ruling of 20 April 1999);

– 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; this programme determines the actions of the authorities forming the Government and ensures interaction between the Government and those authorities (rulings of 10 January 1998 and 15 February 2013); a programme of the Government consolidates the programme provisions of the Government and sets out non-normative guidelines for the activities of the state for a certain time period (ruling of 6 November 2013);

– the basis of a programme of the Government is the programmes of the political forces that have won the election to the parliament; however, the provisions of those programmes acquire a legal meaning only through a programme of the Government and oblige both the Government and the majority of the Seimas supporting it to act respectively; such recognition of the legal meaning of a programme of the Government

is a characteristic feature of parliamentary democracy; the said feature is consolidated in the norms of Item 7 of Article 67 and Paragraph 5 of Article 92 of the Constitution; this is the reason why the President of the Republic must appoint the Prime Minister who is supported by the majority of the Seimas and must approve such a Government whose programme can be approved by a majority vote of the members of the Seimas who take part in the sitting (ruling of 10 January 1998);

– seeking to gain the confidence of the Seimas, in foreseeing the directions of its activities for a certain time period, the Government must take into consideration the possible approval or non-approval by the members of the Seimas; by expressing its confidence in a programme of the Government, the Seimas takes the obligation to supervise how the Government will act in implementing its programme (rulings of 10 January 1998 and 6 November 2013); the programme of the Government is compulsory to the Government for the whole term of its powers; 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 (ruling of 10 January 1998).

… the regulation governing the granting of powers to the Government, consolidated in Item 7 of Article 67 and Paragraph 5 of Article 92 of the Constitution, reflects the particularities of parliamentary pluralist democracy and expresses one of the most important features of a parliamentary republic – the confidence of the Seimas as the basis for the powers of the Government. Such confidence of the Seimas is expressed in the Government *in corpore*, i.e. by giving assent not to the personal composition of the Government, but to its programme, which sets out the provisions of the programme of the Government – guidelines for the activities of the state for a certain time period based on the provisions of the programme of the political forces that have won the election to the Seimas (majority of the Seimas); such assent to the programme of the Government is possible only after the Seimas duly considers it in the spirit of political pluralism and if there is support by the majority of the Seimas for the provisions of the programme of the Government. It should be stressed that, according to Item 7 of Article 67 and Paragraph 5 of Article 92 of the Constitution, powers may be granted to the Government in the sole way – once the Seimas assents to the programme of the Government.

The re-empowerment of the Government when more than half of the ministers are replaced (Paragraph 2 of Article 101 of the Constitution); differences between the re-empowerment of the Government (when more than half of the ministers are replaced) and the return of the powers of the Government (Paragraph 4 of Article 92 and Paragraph 2 of Article 101 of the Constitution)

The Constitutional Court's ruling of 28 August 2020

Paragraph 2 of Article 101 of the Constitution prescribes: "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."

Paragraph 2 of Article 101 of the Constitution establishes the institution of the re-empowerment of the Government when more than half of the ministers are replaced. It should be noted that the institution of receiving powers once again is one of the forms of parliamentary supervision over the Government. By applying such a form, the Seimas can verify whether the programme of the Government that was assented to by the Seimas is still carried out after more than half of the ministers are replaced (ruling of 20 April 1999).

As the Constitutional Court has pointed out in interpreting Paragraph 2 of Article 101 of the Constitution, the composition of the Government may change for 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 (ruling of 20 April 1999).

… under Paragraph 2 of Article 101 of the Constitution, the reason for re-empowering the Government is a substantial change in its composition – more than half of the ministers, which requires the Seimas to verify whether the Government whose composition changes substantially can implement its programme that

has been assented to by the Seimas. Thus, the replacement of individual ministers, i.e. a non-substantial change in the composition of the Government until more than half of the ministers are replaced, does not, under the Constitution, constitute grounds for doubting the ability of the Government to carry out its programme that has been assented to by the Seimas in accordance with the procedure laid down in Paragraph 5 of Article 92 of the Constitution.

According to Paragraph 2 of Article 101 of the Constitution, a Government with a substantially changed composition (when more than half of the ministers are replaced) does not return its powers to the President of the Republic, but it must receive them once again as an expression of the confidence of the Seimas; if it fails to receive such powers, the Government is deemed to have lost the confidence of the Seimas and must resign. Thus, the institution, consolidated in Paragraph 2 of Article 101 of the Constitution, of the re-empowerment of the Government differs fundamentally from the institution of the return of the powers of the Government, which is consolidated in Paragraph 4 of Article 92 of the Constitution, which provides that the Government returns its powers to the President of the Republic after an election of the Seimas or after an election of the President of the Republic.

Interpreting the provision of Paragraph 4 of Article 92 of the Constitution, the Constitutional Court has noted that, according to that provision, the return of the powers of the Government is envisaged in two cases: first, after an election to the Seimas and, second, after an election of the President of the Republic (ruling of 10 January 1998). As the Constitutional Court noted in its ruling of 10 January 1998, after an election of the Seimas, the Government must not only return its powers, but also resign (Item 4 of Paragraph 3 of Article 101 of the Constitution); thus, in this case, the return of powers is the first step towards the compulsory resignation of the Government imperatively prescribed by the Constitution; it is evident that, after an election of the Seimas, the subject that expressed confidence in the Government and granted it the powers to act is clearly missing; therefore, the Government must resign. It should be noted that, in this case, the Government is not re-empowered, because this Government resigns when a new Government is formed.

The Constitutional Court also noted in its ruling of 10 January 1998 that, after an election of the President of the Republic, the Government returns its powers to the newly elected President of the Republic; however, the norms of the Constitution do not prescribe that the Government must resign in such a situation; this is due to the fact that, after a new Head of State takes office, the confidence of the Seimas in the Government remains intact; therefore, in the case of the return of powers after the election of a new President of the Republic, the same Government must be assigned by the Head of State to continue to exercise its functions. Thus, the procedure for the return of powers provides the President of the Republic with the possibility of verifying whether the Seimas continues to have confidence in the Government; the President of the Republic, on the basis of Article 92 and Item 8 of Article 84 of the Constitution, taking account of the tradition of parliamentary democracy, under the procedure established in Item 8 of Article 84 of the Constitution, proposes the candidate for the post of the Prime Minister of the Government that has returned its powers for consideration by the Seimas; after the Seimas approves the candidate for the post of the Prime Minister and the President of the Republic appoints the Prime Minister and approves the composition of the Government proposed by the Prime Minister, it is recognised that the Government once again receives its powers to act, unless more than half of the ministers are replaced (ruling of 10 January 1998).

It needs to be noted that, in this case, according to Paragraph 4 of Article 92 of the Constitution, the Government is deemed to have once again received the powers to act after the Seimas approves the candidate for the Prime Minister of the Government that has returned its powers and not to the programme of the Government, as the confidence of the Seimas in the Government, expressed previously in accordance with Paragraph 5 of Article 92 of the Constitution after the assent of the Seimas to the programme of that Government, remains, i.e. there is no constitutional basis for the Seimas to verify whether the Government can continue to implement the programme to which it has assented. Such a constitutional basis is established only in Paragraph 2 of Article 101 of the Constitution and is related not to an election of the President of the Republic, but to the said substantial change – more than half of the ministers – in the composition of the Government, which may occur not exclusively after an election of the President of the Republic.

Interpreting Paragraph 2 of Article 101 of the Constitution, the Constitutional Court noted in its ruling of 20 April 1999 that the procedure for receiving powers once again is regulated by the Statute of the Seimas. However, this does not mean that, under the Constitution, the Seimas has broad discretion to regulate, in the Statute of the Seimas, the procedure for the re-empowerment of the Government when more than half of the ministers are replaced. Paragraph 2 of Article 101 of the Constitution must not be understood literally as implying the right of the Seimas to re-empower the Government by means of a legal act of any content when more than half of the ministers are replaced.

In its acts, the Constitutional Court has held more than once that the provisions of the Constitution, which is an integral act (Paragraph 1 of Article 6 of the Constitution), are interrelated and constitute a harmonious system, that there is a balance among the values consolidated in the Constitution, and that it is not permitted to interpret any provision of the Constitution in a way that the content of any other provision of the Constitution would be distorted or denied, since the essence of the entire constitutional legal regulation would, thus, be distorted and the balance of values consolidated in the Constitution would, thus, be disturbed. Moreover, the Constitutional Court has also held that no constitutional provision can be interpreted only literally; it is not permitted to interpret any provision of the Constitution in a way that the content of any other provision of the Constitution would be distorted or denied, since the essence of the entire constitutional legal regulation would, thus, be distorted and the balance of values consolidated in the Constitution would, thus, be disturbed (*inter alia*, the rulings of 29 April 2008, 2 September 2009, and 6 December 2012). In this context, it should be noted that the constitutional legal regulation is established explicitly, while it may also be consolidated implicitly (ruling of 15 February 2019).

Thus, Paragraph 2 of Article 101 of the Constitution must be interpreted taking into account its semantic connections with Item 7 of Article 67 and Paragraph 5 of Article 92 of the Constitution, which … lay down the regulation governing the granting of powers to the Government; that regulation reflects the particularities of parliamentary pluralist democracy and expresses one of the most important features of a parliamentary republic – the confidence of the Seimas as the basis for the powers of the Government. … according to Item 7 of Article 67 and Paragraph 5 of Article 92 of the Constitution, such confidence of the Seimas is expressed in the Government *in corpore*, i.e. by giving assent not to the personal composition of the Government, but to its programme, which sets out the provisions of the programme of the Government – guidelines for the activities of the state for a certain time period based on the provisions of the programme of the political forces that have won the election to the Seimas (majority of the Seimas).

… according to the Constitution, the Seimas does not decide 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; therefore, the only way for the Seimas to express confidence in the Government *in corpore* of a substantially changed composition (when more than half of the ministers are replaced) in accordance with Paragraph 2 of Article 101 of the Constitution, as is also the case of expressing confidence in a new Government in accordance with Paragraph 5 of Article 92 of the Constitution, is to assent to the programme of the Government after due consideration. Only in this way can the Seimas verify, in accordance with Paragraph 2 of Article 101 of the Constitution, whether the Government of a substantially changed composition can carry out its programme. … the re-empowerment of the Government when more than half of the ministers are replaced provides the possibility of assessing the implementation of the programme of the Government and make necessary changes thereto, taking into account the implemented programme provisions and the evolution of the state and society. Among other things, changes in the programme of the Government may be related to the fact that more than half of the ministers are replaced following a partial change of the political forces (which are in the Seimas) forming the Government and, therefore, there could be a need to integrate into the programme of the Government the programme provisions of the new political forces that have joined the majority of the Seimas.

Consequently, under Paragraph 2 of Article 101 of the Constitution, when more than half of the ministers are replaced, the procedure of the re-empowerment of the Government must not be a mere formality: the Government must receive the powers once again when the Seimas adopts a decision to assent

to the programme of the Government. A different interpretation of Paragraph 2 of Article 101 of the Constitution, according to which the Seimas may purportedly re-empower the Government without reconsidering its programme provisions and without assenting to its programme would be incompatible with the requirement, arising from Paragraphs 2 and 3 of Article 5 of the Constitution and from the constitutional principles of responsible governance and a state under the rule of law, that the Seimas must properly implement the constitutional powers of supervision over the Government, as well as incompatible with the concept of pluralistic parliamentary democracy, which is enshrined in the Constitution and which implies, *inter alia*, political pluralism in the parliament of a democratic state under the rule of law.

[…]

… the activities of the Government are based on the confidence of the Seimas that has approved the programme of that Government; the only way for the Seimas to express confidence in the Government *in corpore* of a substantially changed composition (when more than half of the ministers are replaced) in accordance with Paragraph 2 of Article 101 of the Constitution, as is also the case of expressing confidence in a new Government in accordance with Paragraph 5 of Article 92 of the Constitution, is to assent to the programme of the Government after due consideration.

When re-empowering the Government in cases where more than half of the ministers are replaced, the Seimas must adopt the resolution of the Seimas on assenting to the programme of the Government by a majority vote of the members of the Seimas participating in the sitting

The Constitutional Court's ruling of 28 August 2020

… 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 when the Seimas adopts a decision to assent to the programme of the Government. Having regard to the overall constitutional regulation, *inter alia*, Paragraph 5 of Article 92 of the Constitution, as well as the requirement, stemming from the Constitution, that, in resolving state governance issues assigned to the Seimas under the Constitution and laws, where the regulation of the said issues does not require the adoption of laws and where resolving those issues gives rise to legal consequences for other persons, the Seimas must adopt resolutions of the Seimas by a majority of the members of the Seimas participating in the sitting (unless the Constitution explicitly specifies a different majority necessary for the adoption of the respective decision of the Seimas), it should be concluded that, by re-empowering the Government in accordance with Paragraph 2 of Article 101 of the Constitution when more than half of the ministers are replaced, the Seimas must adopt the resolution of the Seimas on assenting to the programme of the Government by a majority vote of the members of the Seimas participating in the sitting.

7.3. THE POWERS OF THE GOVERNMENT

On the powers of the Government in the sphere of the budget, see 11. The state budget and finances, 11.1. The state budget. The property liabilities of the state. Taxes.

The powers of the Government

The Constitutional Court's ruling of 26 February 2010

The powers of the Government as an institution of state power are established, *inter alia*, in Article 94 of the Constitution. Under Article 94 of the Constitution, the Government: manages national affairs, protects the territorial inviolability of the Republic of Lithuania, and guarantees state security and public order (Item 1); executes laws, the resolutions of the Seimas on the implementation of laws, as well as the decrees of the President of the Republic (Item 2); coordinates the activities of ministries and other establishments of the Government (Item 3); prepares a draft state budget and submits it to the Seimas; executes the state budget and submits to the Seimas a report on the execution of the budget (Item 4); prepares draft laws and presents them to the Seimas for consideration (Item 5); establishes diplomatic ties and

maintains relations with foreign states and international organisations (Item 6); and performs other duties prescribed to the Government by the Constitution and other laws (Item 7).

The powers of the Government are also established in Item 3 of Article 84, Paragraph 1 of Article 89, Paragraph 1 of Article 123, Paragraph 1 of Article 128, etc. of the Constitution. The powers of the Government arise from the Constitution and laws. Everything that the Government performs, while implementing the powers established for it in the Constitution and laws, is deciding the affairs of state governance (rulings of 29 November 2001 and 30 May 2003).

The powers of the Government

The Constitutional Court's ruling of 13 May 2010

The Constitution consolidates only the main powers of the Government and stipulates that the Government also performs other duties prescribed to it not only by the Constitution, but also by other laws (Item 7 of Article 94 of the Constitution). Such a constitutional regulation of the powers of the Government is determined by the fact that the areas and functions of state governance are extremely varied and subject to change. The activity of the Government has not only an executive nature, but also a procedural nature. While executing laws and resolutions adopted by the Seimas, the Government itself passes normative and individual legal acts and ensures their enforcement (ruling of 23 November 1999).

7.4. THE ORGANISATIONAL FORM OF THE ACTIVITY OF THE GOVERNMENT AND LEGAL ACTS ADOPTED BY IT

Legal acts adopted by the Government are substatutory legal acts

The Constitutional Court's ruling of 26 October 1995

… Legal acts adopted by the Government are substatutory legal acts … . In its ruling of 19 January 1994, the Constitutional Court held the following: the norms of a law are implemented by means of a substatutory legal act; however, "such an act may not replace the law itself and create new general legal rules the legal force of which would compete with the norms of the law. A substatutory legal act is an act of the application of the norms of a law irrespective of whether such a substatutory act has one-off (ad hoc) or permanent validity" …

Legal acts adopted by the Government are substatutory legal acts

The Constitutional Court's ruling of 18 June 1998

… in the system of the sources of legal acts that exists in this country, legal acts adopted by the Government are substatutory acts. Substatutory legal acts particularise and regulate the implementation of the norms of laws.

The organisational form of the activity of the Government and legal acts adopted by it (Paragraph 1 of Article 95 of the Constitution)

The Constitutional Court's ruling of 23 November 1999

Paragraph 1 of Article 95 of the Constitution provides that "The Government of the Republic of Lithuania shall decide the affairs of state governance at its sittings by adopting resolutions by a majority vote of all the members of the Government".

The aforesaid legal norm establishes the organisational form of the activity of the Government, i.e. questions are decided at the sittings of the Government; it is specified therein what kind of a majority vote is necessary in order to adopt a resolution, i.e. a resolution must be adopted by a majority vote of all the members of the Government; and the type of legal acts adopted by the Government is established therein, i.e. the affairs of state governance are decided by adopting resolutions of the Government. To summarise the content of the legal norm set out in Paragraph 1 of Article 95 of the Constitution, the conclusion should be drawn that this norm determines the manner how the Government decides the affairs of state governance.

The powers of the Government to adopt substatutory acts (Items 2 and 7 of Article 94 of the Constitution)

The Constitutional Court's ruling of 15 March 2000

Article 94 of the Constitution prescribes:

"The Government of the Republic of Lithuania:

… 2) shall execute laws, the resolutions of the Seimas on the implementation of laws, as well as the decrees of the President of the Republic;

… 7) shall discharge other duties prescribed to the Government by the Constitution and other laws."

[…]

Under Item 2 of Article 94 of the Constitution, the Government may adopt substatutory acts regardless of whether or not a law instructs it to do so. Under Item 7 of Article 94 of the Constitution, the Government is obligated to adopt substatutory acts in order to perform its duty imposed on it by the Constitution and other laws. … In all cases, however, a legal act adopted by the Government may not be in conflict with any law, and, furthermore, such a legal act may not contain any new legal norms competing with those of a law. In addition, the legislature may not instruct the Government to perform certain actions where the content of such an instruction would violate the constitutional principle of the supremacy of laws.

Thus, the sole ground that a law instructs the Government to regulate additionally a certain question of the implementation of the law, or that such an instruction is missing, makes it impossible to decide whether a certain substatutory act adopted by the Government is in conflict with the Constitution and laws or whether such a substatutory act is in compliance with them. In every concrete case, an assessment should be made of the relation between the content of the norms of a substatutory act adopted by the Government and that of the norms of the laws for the implementation of which the said substatutory act was adopted.

The duty of the Government to harmonise its resolutions with the norms of laws that are adopted later (Items 2 and 7 of Article 94 of the Constitution)

The Constitutional Court's ruling of 5 April 2000

… a government resolution is a substatutory legal act; therefore, such an act may not be in conflict with any law and it may not contain any legal norms competing with those of a law. In cases where a government resolution that contains norms conflicting with a law is adopted before the said law is passed, such a government resolution must be harmonised with the norms of the law that is adopted later.

[…]

… the norms of Items 2 and 7 of Article 94 of the Constitution that provide that the Government executes laws and performs other duties prescribed to it by the Constitution and other laws should be interpreted as establishing the duty of the Government to amend and supplement the acts that it previously adopted in order that they would be in compliance with subsequently adopted laws, or to repeal the acts that it previously adopted in cases where the legal norms established in such government acts are in conflict with those of laws.

The duty of the Government to adopt substatutory acts that are necessary in order to implement laws (Items 2 and 7 of Article 94 of the Constitution); the Government is bound by its own resolutions

The Constitutional Court's ruling of 30 October 2001

Under the provision of Item 2 of Article 94 of the Constitution, the Government executes laws; thus, the duty of the Government to adopt substatutory acts that are necessary in order to implement laws stems directly from the Constitution.

Moreover, if the legislature believes that it is necessary to adopt certain substatutory acts in order to implement laws, it may impose such a duty on the Government either by means of a law or in a resolution of the Seimas concerning the implementation of laws.

Thus, the duty of the Government to adopt the substatutory acts that are necessary for the implementation of laws stems from the Constitution and, in cases where there is the assignment by the legislature to do so, it also stems from laws and the resolutions of the Seimas concerning the implementation of laws.

The phrase "under the procedure established by the Government" … means that it is the Government itself that must establish the said procedure. The Government may not instruct any other institution to establish such a procedure. In view of the fact that, under Paragraph 1 of Article 95 of the Constitution, the Government decides the affairs of state governance at its sittings by adopting resolutions by a majority vote of all the members of the Government, the aforementioned phrase means that the said procedure must be established by means of a government resolution. Such a resolution must have a normative content. …

In its ruling of 28 June 2001, the Constitutional Court held that the Government is bound by and must observe its own resolutions. Thus, the procedure adopted by the Government is binding not only on other subjects, but also on the Government itself. As long as the procedure established by the Government is in force, it may not adopt any decisions otherwise than under the said procedure.

Implementing the assignment by the legislature to establish a certain procedure, the Government may lay down only such a legal regulation that is in compliance with laws. The procedure established by the Government may not contain any legal norms that would provide for a legal regulation that would be different from that established in laws. The same procedure may not contain any norms competing with the norms of laws, either.

The powers of the Government to establish when its resolutions come into force and lose their validity (Paragraph 1 of Article 95 of the Constitution)

The Constitutional Court's ruling of 29 October 2003

Under Paragraph 1 of Article 95 of the Constitution, the Government of the Republic of Lithuania decides the affairs of state governance at its sittings by adopting resolutions by a majority vote of all the members of the Government.

Under the Constitution, the Government has the powers to adopt resolutions; consequently, the Government also has the powers to establish when a resolution adopted by it comes into force. According to the Constitution, the Government also has the powers to establish when its resolutions lose their validity. The Government can establish this by adopting a resolution. Thus, according to the Constitution, only the Government itself has the right to decide when government resolutions come into force and lose their validity. In establishing when resolutions adopted by it come into force or lose their validity, the Government must respect the Constitution and laws.

The Constitutional Court has held in its rulings more than once that, if the Constitution directly establishes particular powers of a certain state institution, no state institution can take over such powers from another institution, or transfer or waive them, while the other institution cannot accept such powers; such powers may not be changed or limited by law.

Under the Constitution, the Government may not establish, by its resolutions, any such a legal regulation that the time of the entry into force or the loss of the validity of a resolution would depend on the entry into force of a lower-ranking legal act that is passed by another subject.

Signing resolutions of the Government and their authenticity (Paragraph 2 of Article 95 of the Constitution)

The Constitutional Court's ruling of 29 October 2003

… under Paragraph 2 of Article 95 of the Constitution, the resolutions of the Government are signed by the Prime Minister and the minister of the respective area.

Thus, Paragraph 2 of Article 95 of the Constitution prescribes what state officials have the powers to sign the resolutions of the Government. The provision of Paragraph 2 of Article 95 of the Constitution also

means that the Prime Minister and the minister of the respective area must sign the resolutions of the Government if they have been adopted according to the established procedure, and that persons who are not specified in Paragraph 2 of Article 95 of the Constitution, i.e. who are not the Prime Minister and the minister of the respective area, or are only the Prime Minister or only the minister of the respective area, are prohibited from signing the resolutions of the Government.

According to the Constitution, after the entry into force of the Constitution, only those resolutions of the Government that are signed by the Prime Minister and the minister of the respective area are authentic.

[…]

Signing a government resolution is a one-off act. Its signing testifies that such a resolution of the Government has been adopted and that namely the signed text of the government resolution is authentic.

[…]

The requirement of Paragraph 2 of Article 95 of the Constitution stipulating that the resolutions of the Government are signed by the Prime Minister and the minister of the respective area must be applied to government resolutions that were adopted after the entry into force of the Constitution. This requirement may not be applied retroactively to the government acts that were adopted and signed before the entry into force of the Constitution.

The Government is bound by its own resolutions

The Constitutional Court's ruling of 8 July 2005

The Government is bound by its own resolutions (ruling of 28 June 2001). As long as a government resolution is not amended or repealed, the Government must follow the requirements laid down in such a resolution.

The duty of the Government to observe laws that are in force (Item 2 of Article 94 of the Constitution)

The Constitutional Court's ruling of 23 May 2007

Under the Constitution, the Government, as an institution of executive power, has broad discretion to form and pursue the economic policy of the state and to regulate economic activity accordingly. Under Paragraph 1 of Article 95 of the Constitution, the Government decides the affairs of state governance at its sittings by adopting resolutions by a majority vote of all the members of the Government; the Government is jointly and severally responsible to the Seimas for the general activities of the Government (Paragraph 1 of Article 96 of the Constitution). According to its competence defined in the Constitution and laws, in formulating and pursuing the economic policy of the state and regulating economic activity in the respective manner, *inter alia*, by adopting resolutions, the Government must not act *ultra vires*; the Government must observe the Constitution and laws. Should the Government fail to observe laws, the constitutional principle of a state under the rule of law, implying the hierarchy of legal acts, and Item 2 of Article 94 of the Constitution, under which the Government executes, *inter alia*, laws, would be denied.

[…]

… the Government … does not have discretion to decide not to apply the provisions of a certain law regulating the respective relationships, unless the non-application of a certain provision of such a law is *expressis verbis* provided for in laws.

Legal acts adopted by the Government and their official publication (Article 95 of the Constitution, Paragraph 4 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union)

The Constitutional Court's ruling of 27 June 2007

Under Article 95 of the Constitution, the Government decides the affairs of state governance at its sittings by adopting resolutions by a majority vote of all the members of the Government (Paragraph 1); the

resolutions of the Government are signed by the Prime Minister and the minister of the respective area (Paragraph 2).

In this context, it should be mentioned that the Constitution does not *expressis verbis* establish any time frame within which adopted government resolutions must be signed and officially published. The time frame during which a resolution adopted by the Government must be signed and officially published must be laid down in a law.

When interpreting Article 95 of the Constitution (also in the context of other provisions of the Constitution), the Constitutional Court held that, under the Constitution, the Government, while deciding the affairs of state governance, must always adopt resolutions; such resolutions must be published regardless of whether the legal acts adopted by the Government are normative or individual, and regardless of the subjects or the circles of subjects for which the said legal acts are intended (rulings of 29 November 2001 and 30 May 2003). The procedure for the publication of government resolutions and their entry into force is established by means of a law (ruling of 29 November 2001).

In this context, it needs to be emphasised that the provisions of the official constitutional doctrine that the Government, while deciding the affairs of state governance, must always adopt resolutions and such resolutions must be published regardless of whether the legal acts adopted by the Government are normative or individual, and regardless of the subjects or the circles of subjects for which the said legal acts are intended, have been formulated in the jurisprudence of the Constitutional Court, *inter alia*, in the constitutional justice cases where the Constitutional Court investigated the constitutionality of the legal acts (paragraphs thereof) that were passed prior to 14 August 2004 when the Republic of Lithuania's Constitutional Act on Membership of the Republic of Lithuania in the European Union, which was adopted on 13 July 2004, came into force; the said constitutional act approved in a constitutional manner the membership of the Republic of Lithuania in the European Union (rulings of 13 December 2004 and 14 March 2006) and is, according to Article 150 of the Constitution, a constituent part of the Constitution.

After the entry into force of the Constitutional Act on Membership of the Republic of Lithuania in the European Union, the formerly formulated official constitutional doctrine of government acts is developed in the jurisprudence of the Constitutional Court while taking account of the fact that Paragraph 4 of this Constitutional Act prescribes that the Government considers the proposals to adopt the acts of European Union law following the procedure established by legal acts and that, as regards these proposals, the Government may adopt decisions or resolutions for the adoption of which the provisions of Article 95 of the Constitution are not applicable.

Thus, the provisions of the official constitutional doctrine that the Government, while deciding the affairs of state governance, must always adopt resolutions and that such resolutions must be officially published regardless of whether the legal acts adopted by the Government are normative or individual, and regardless of the subjects or the circles of subjects for which the said legal acts are intended are not applicable to the government resolutions and decisions that are adopted pursuant to Paragraph 4 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union.

The acts of the Government are substatutory legal acts

The Constitutional Court's ruling of 8 October 2009

… the Constitutional Court … has held that, if the legal regulation laid down in government resolutions competed with the legal regulation established in laws or were not based on laws, there would be not only a violation of both the constitutional principle of a state under the rule of law and Item 2 of Article 94 of the Constitution, but also a violation of Paragraph 2 of Article 5 of the Constitution, which provides that the scope of powers is limited by the Constitution; in addition, this could lead to a violation of the constitutional principle of the separation of powers (rulings of 31 May 2006, 13 August 2007, and 29 April 2009).

The powers of the Government to adopt substatutory acts (Items 2 and 7 of Article 94 of the Constitution)

The Constitutional Court's ruling of 29 September 2015

Under Item 2 of Article 94 of the Constitution, the Government executes laws, the resolutions of the Seimas on the implementation of laws, as well as the decrees of the President of the Republic; under Item 7 of this article, the Government implements other duties prescribed to it by the Constitution and other laws.

While interpreting these constitutional provisions, the Constitutional Court has held on more than one occasion that legal acts adopted by the Government are substatutory acts; they are the acts of application of law; they elaborate the legal norms and make them more concrete, as well as regulate their implementation; it is important that the Government would adopt substatutory legal acts without exceeding its powers and that these substatutory legal acts would not be in conflict with the Constitution and laws.

The Constitutional Court has noted that, under Item 2 of Article 94 of the Constitution, the Government may adopt substatutory acts regardless of whether or not a law instructs it to do so; meanwhile, under Item 7 of this article, it must adopt substatutory acts in order to fulfil duties assigned to it by the Constitution and laws (ruling of 15 March 2000). In the acts of the Constitutional Court, it is also emphasised that the legislature may not assign the Government to perform certain actions in such a way that, by its content, would violate the constitutional principle of the supremacy of laws (ruling of 15 March 2000) and that only such powers of the Government to issue legal acts may be regarded to be in compliance with the Constitution that stem from the Constitution, laws, or resolutions of the Seimas concerning the implementation of such laws that are not in conflict with the Constitution, as well as from such decrees of the President of the Republic that are not in conflict with the Constitution (ruling of 5 March 2004). Thus, the sole ground that a law instructs the Government to regulate additionally a certain question of the implementation of the law, or that such an instruction is missing, makes it impossible to decide whether a certain substatutory act adopted by the Government is in conflict with the Constitution and laws, or whether such a substatutory act is in compliance with them; in every concrete case, an assessment should be made of the relation between the content of the norms of a substatutory act adopted by the Government and that of the norms of the laws for the implementation of which the said substatutory act was adopted (ruling of 15 March 2000).

The duty of the Government to observe valid laws, *inter alia*, the procedure for adopting legal acts that is established in laws (Item 2 of Article 94 of the Constitution)

The Constitutional Court's ruling of 8 July 2016

When interpreting Item 2 of Article 94 of the Constitution, the Constitutional Court has held on more than one occasion that, under the Constitution, the Government must observe valid laws when passing its legal acts (*inter alia*, the rulings of 18 December 2001, 13 August 2007, and 16 June 2015), *inter alia*, it must observe such laws that establish the procedure for adopting legal acts. The Government must follow the procedure for the drafting, assessment, coordination, and consideration of its own resolutions, as well as for voting on them, which is established by laws (ruling of 13 August 2007). It should be noted that the duty of the Government to observe the procedure for adopting legal acts that is established in laws not only may, but also must be treated as a constitutional duty.

… in the course of adopting legal acts, none of the stages or rules of the procedure for adopting legal acts that is established in laws may be ignored; the necessity to adopt legal acts consistently with the procedure for adopting legal acts that is established in laws stems from the Constitution. Under the Constitution, the stages and rules of the procedure for adopting legal acts of the Government, as established in laws and other legal acts, must be observed while preparing any draft legal act of the Government, irrespective of whether this legal act is aimed to amend (modify) a legal regulation, to establish a new one, or to annul an effective one.

The duty of the Government to comply with the publicity and transparency requirements of law-making procedures when adopting legal acts

The Constitutional Court's ruling of 8 July 2016

… the constitutional principle of responsible governance, which is to be interpreted in conjunction with the imperative obliging state institutions to serve the people, as consolidated in Paragraph 3 of Article 5 of the Constitution, implies the publicity and transparency requirements of law-making procedures; such requirements must be followed, *inter alia*, by institutions that exercise state power. …

… also such constitutionally justifiable cases are possible where a law may also provide for a non-public process of passing legal acts where such legal acts are adopted by the Government, as, for instance, in order to protect information constituting a state secret, to avoid a threat to the constitutional order, defensive power, or other important interests.

[…]

… in view of the constitutional status of the Government as an executive state institution, as well as of the fact that, under Article 95 of the Constitution, the Government decides the affairs of state governance at its sittings by adopting resolutions, only a law may provide for the constitutionally justified exceptional cases related to the adoption of government decisions, *inter alia*, during a state of emergency or martial law or in the event of a natural disaster, when the agenda of a sitting of the Government can be supplemented with new draft legal acts that have not been agreed, according to the ordinary procedure, with the ministries, as well as other government establishments and state institutions concerned, by specifying the relevant reasons. However, once such a procedure for the initiation of the legal acts (submission of draft legal acts) of the Government is established by means of a law, no preconditions should be created for the formation of such a practice of supplementing the agenda of a sitting of the Government with additional issues that, by way of derogation from the said constitutionally justified exceptions, would deny the constitutional requirements of publicity and transparency of law-making procedures.

Legal acts adopted by the Government (Article 1 of the Constitution and Article 4 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union)

The Constitutional Court's ruling of 2 March 2018

Paragraph 1 of Article 95 of the Constitution provides that the Government decides on state governance issues at its sittings by adopting resolutions by a majority vote of all the members of the Government. …

Interpreting Paragraph 1 of Article 95 of the Constitution, the Constitutional Court has held that the Government, while deciding on state governance issues, must always adopt resolutions; these resolutions must be officially published regardless of whether the legal acts adopted by the Government are normative or individual, and regardless of the subjects or the circles of subjects for which these legal acts are intended (rulings of 29 November 2001, 30 May 2003, and 27 June 2007); state governance issues assigned to the competence of the Government under the Constitution and laws may not be decided by the adoption of another type of an act by the Government (*inter alia*, the rulings of 29 November 2001, 30 May 2003, and 13 May 2010).

The only exception provided for by the Constitution when the Government is allowed to disregard these requirements is set out in Article 4 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union, which is a constituent part of the Constitution:

"The Government shall consider the proposals to adopt the acts of European Union law following the procedure established by legal acts. As regards these proposals, the Government may adopt decisions or resolutions for the adoption of which the provisions of Article 95 of the Constitution are not applicable."

Thus, as noted by the Constitutional Court, the provisions of the official constitutional doctrine that the Government, while deciding on state governance issues, must always adopt resolutions and that the legal acts of the Government must be officially published regardless of whether the legal acts adopted by the Government are normative or individual, and regardless of the subjects or the circles of subjects for which

these legal acts are intended are not applicable to the decisions and resolutions of the Government that are adopted in accordance with Article 4 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union (rulings of 27 June 2007 and 13 May 2010).

In this context, it should be noted that, in accordance with Article 4 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union, when the procedure for considering the proposals to adopt the acts of European Union law is established in legal acts, certain other requirements that are laid down in Article 95 for the adoption of the acts of the Government by which the Government decides on state governance issues may also be not applied.

This means, therefore, that it may be allowed to decide regarding the proposals to adopt the acts of European Union law not in the sittings of the Government, but in a different organisational form of the activities of the Government (among others, in the meetings of the Government); the decisions and resolutions of the Government on these proposals may also be exempted from the requirement, consolidated for the resolutions of the Government in Paragraph 2 of Article 95 of the Constitution, that the resolutions of the Government are signed by the Prime Minister and the minister of the respective area.

It should be noted that the wording "the provisions of Article 95 of the Constitution are not applicable" of Article 4 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union may not be made absolute and interpreted as allowing for the adoption of the above-mentioned decisions and resolutions of the Government not by a majority vote of all the members of the Government.

In the Lithuanian system of executive authority institutions, the Government, which implements state governance, has a special place (rulings of 10 January 1998, 13 December 2004, and 13 May 2010); … under the Constitution, the Government is a collegial executive authority institution, which implements state governance.

It should be mentioned that, *inter alia*, interpreting the provision consolidated in Article 1 of the Constitution that the State of Lithuania is an independent democratic state, the Constitutional Court has pointed out that one of the democratic principles of decision making is the principle of the majority (rulings of 22 July 1994, 4 April 2006, and 29 March 2012).

It should also be mentioned that, as it is clear from the *travaux préparatoires* of the Constitutional Act on Membership of the Republic of Lithuania in the European Union, Article 4 of this Act was not aimed at imposing a requirement different from the requirement of a majority vote of all the members of the Government, laid down in Paragraph 1 of Article 95 of the Constitution, for the adoption of the decisions and resolutions of the Government, but it was aimed at ensuring, compared to the adoption of the resolutions of the Government, the faster adoption of the decisions and resolutions of the Government on approving the position of the Republic of Lithuania on the proposals to adopt the acts of European Union law.

Thus, it should be noted that, under the Constitution, when deciding on state governance issues, the Government may adopt resolutions (Paragraph 1 of Article 95 of the Constitution), as well as decisions or resolutions (Article 4 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union). It should also be noted that, in view of the constitutional nature of the Government as a collegial executive authority institution, as well as the requirement, stemming from the constitutionally consolidated principle of democratic decision making, that collegial state institutions must adopt decisions by a majority vote, under the Constitution, *inter alia*, Paragraph 1 of Article 95 thereof, all acts of the Government that the Government adopts in deciding on state governance issues (*inter alia*, in approving, in accordance with Article 4 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union, the position of the Republic of Lithuania on the proposals to adopt the acts of European Union law) must be adopted by a majority vote of all the members of the Government. If Article 4 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union were interpreted differently, i.e. that, purportedly, under this article, a majority vote of all the members of the Government is not required to adopt the decisions and resolutions of the Government, the position of the Republic of Lithuania on the proposals to adopt the acts of European Union law, once approved by the said acts of the Government, could not be

considered to be the position of the Government and, at the same time, could not be considered to be the position of the Republic of Lithuania.

To sum up, it should be noted that, under the Constitution, an act adopted by the Government in deciding state governance issues not by a majority vote of all the members of the Government cannot be considered an expression of the will of the Government as a collegial executive authority institution.

Resolutions of the Government on the recognition of economic, social, cultural, or other projects as important to the state

The Constitutional Court's ruling of 12 April 2018

… under the Constitution, while deciding on state governance issues, the Government must always adopt resolutions; these resolutions must be officially published regardless of whether the legal acts adopted by the Government are normative or individual, and regardless of the subjects or the circles of subjects for which these legal acts are intended (*inter alia*, the rulings of 30 May 2003, 27 June 2007, and 2 March 2018).

The resolutions of the Government, as well as other legal acts, may differ according to the form, contents, structure, or scope and may have various constituent parts (appendices) (ruling of 27 June 2007). The Constitutional Court held in its ruling of 9 February 2010 that all parts of a normative legal act (including appendices) constitute a whole, are inseparably interconnected, and have equal legal force; a legal act and its appendices may not be separated, because, if the content specifically set out in appendices is changed, the content of the entire normative legal act also changes; an entire legal act with all its constituent parts must be published.

[…]

… in its rulings of 26 February 2010 and 2 April 2013, the Constitutional Court, interpreting in conjunction with Paragraph 2 of Article 7 of the Constitution, the requirements, stemming from the constitutional principle of a state under the rule of law, for the publication of government acts on approving state property privatisation agreements (drafts on amending them), noted the following:

– no cases may be tolerated where government resolutions perfunctorily approbate privatisation agreements the content of which is not known to the public, and do not indicate anything specific;

– the constitutional requirement that law must be public means not only that a government resolution on approving draft privatisation agreements, including their appendices, for the most important Lithuanian economic objects must be officially published, but also that such a government resolution must not only formally approve the draft agreement, including appendices, but it also must, *inter alia*, state that the provisions of the draft agreement, which is approved by this resolution, are in compliance with the privatisation conditions provided for in the programme for the privatisation of the object, as well as it must contain the principal provisions of the agreement, such as the aim and object of the agreement and the essential obligations of the state.

These provisions of the official constitutional doctrine are *mutatis mutandis* applicable to government resolutions on the recognition of economic, social, cultural, or other projects as important to the state.

[…]

… Paragraph 2 of Article 7 of the Constitution, the constitutional principle of a state under the rule of law, and the principle of the transparency of the activities of public authority institutions and officials, which stems from Paragraphs 2 and 3 of Article 5 of the Constitution and the constitutional principle of responsible governance, imply the requirement for the Government, when recognising economic, social, cultural, or other projects to be important to the state, not only to express, in a government resolution, a formal decision to recognise a certain project to be important to the state, but also to establish, in this resolution (or its constituent parts) or another officially published legal act, the essential conditions for the implementation of the project that is important to the state, such as the aim, object, implementation deadlines, the sources of funding, the essential obligations of the developer (developers) of the project, etc.

[…]

… after certain projects are recognised to be important to the state in accordance with the procedure established by legal acts, Paragraphs 2 and 3 of Article 46 of the Constitution and the constitutional principle of responsible governance give rise to the duty of the Government to exercise effective control over the implementation of these projects, *inter alia*, in accordance with the procedure and grounds established by legal acts, to recognise as no longer valid government resolutions on giving certain projects the status of a project important to the state in cases where these projects no longer meet the criteria for declaring them to be important to the state.

The duty of the Government to ensure the effective execution of laws (Items 2 and 7 of Article 94 of the Constitution)

The Constitutional Court's ruling of 27 April 2018

… Items 2 and 7 of Article 94 of the Constitution, which consolidate the powers of the Government as an executive authority institution, as well as the constitutional principles of a state under the rule of law and responsible governance, give rise to the duty of the Government to ensure the effective execution of laws, *inter alia*, in cases where there is no specific authorisation for it established by means of a law. This duty of the Government includes, *inter alia*, the duty of the Government to adopt substatutory acts necessary for ensuring the continuity of the activities of establishments financed from the state budget and the proper performance of the functions assigned to them. When adopting these legal acts, the Government … under the Constitution, must observe the effective laws and, when executing certain laws, must not violate others.

7.5. THE MEMBERS OF THE GOVERNMENT. MINISTRIES

The powers of the Prime Minister to sign international treaties (Item 1 of Article 84, Item 6 of Article 94, and Paragraph 1 of Article 97 of the Constitution)

The Constitutional Court's ruling of 17 October 1995

The fact that the Prime Minister is entitled to sign international treaties can be derived from the constitutional provisions related to the powers of the Government in the sphere of foreign policy and international relations. Item 1 of Article 84 of the Constitution provides that the President of the Republic "shall decide the basic issues of foreign policy and, together with the Government, conduct foreign policy". The second provision of this item means that not only the President of the Republic, but also the Government has the concrete powers to conclude international treaties, as without such powers it is impossible to conduct foreign policy. Item 6 of Article 94 of the Constitution provides that the Government "shall establish diplomatic ties and maintain relations with foreign states and international organisations". Such ties and relations are also established and consolidated by international treaties. The right of the Prime Minister to sign treaties is also substantiated by the provision of Paragraph 1 of Article 97 of the Constitution, according to which "The Prime Minister shall represent the Government of the Republic of Lithuania".

Ministries, their establishment, and dissolution (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". …

Ministries are state governance institutions that have special competence. They are established or dissolved with a view to organising governance in various spheres. A ministry fulfils the functions of state governance in the sphere established for it by means of laws and other legal acts; in the said sphere, a ministry conducts state policy. Fulfilling their functions, ministries inevitably participate not only in governance, but

also in other legal relationships of varied nature (property relationships, employment relationships, etc.). Ministries are legal persons.

Item 8 of Article 67 of the Constitution consolidates the right of the Seimas to establish and dissolve 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 dissolve a ministry. Thus, this norm of the Constitution ensures the balance of power between the legislative and executive branches.

The competence of ministers to head their respective ministry (Paragraph 1 of Article 98 of the Constitution)

The Constitutional Court's ruling of 23 November 1999

Paragraph 1 of Article 98 of the Constitution provides that "Ministers shall head their respective ministry, shall decide on issues belonging to the competence of their ministry, and shall also discharge other functions provided for by law".

[…]

It should be noted that the following elements constitute the content of the provision "Ministers shall head their respective ministry" of Paragraph 1 of Article 98 of the Constitution: under procedure established by law or by means of other legal acts, a minister is entitled to choose the employees of his/her ministry and to appoint and dismiss them; a minister is entitled to organise the work of the employees of his/her ministry in order that the functions established for the ministry by law and by means of other legal acts would be performed; a minister is entitled to give instructions to all employees of his/her ministry who must carry them out; a minister is entitled to apply disciplinary measures to all employees of his/her ministry who fail to perform their duties or fail to carry out the instructions of the minister, or who fail to carry them out properly; a minister is entitled to give incentives to all employees of his/her ministry.

[…]

It needs to be noted that the competence of a minister to head his/her ministry established in Paragraph 1 of Article 98 of the Constitution implies his/her personal responsibility for the activities of the ministry. Under Paragraph 2 of Article 96 of the Constitution, ministers, in directing the areas of governance entrusted to them, are responsible to the Seimas and the President of the Republic, and are directly subordinate to the Prime Minister. Paragraph 1 of Article 101 of the Constitution provides that ministers must give an account of their activities to the Seimas. …

[…]

… A minister, who is empowered to head his/her ministry under Paragraph 1 of Article 98 of the Constitution, is also responsible for the activity of all the ministry headed by him/her and for the execution of laws, government resolutions, and other legal acts. Thus, a minister is also responsible for the economic and financial activity of his/her ministry regardless of the character of such activity …

The direct subordination of a minister to the Prime Minister (Paragraph 2 of Article 96 of the Constitution)

The Constitutional Court's ruling of 23 November 1999

Under Paragraph 2 of Article 96 of the Constitution, ministers are directly subordinate to the Prime Minister. This means that legally a minister is not subordinate to any other subjects and that, under the Constitution, only the Prime Minister and, in the cases provided for in the Constitution, the President of the Republic may give instructions to a minister. The Constitution does not grant any other subject … the right to give instructions to a minister.

The constitutional status of the Government and its members (Paragraph 2 of Article 60, Articles 99 and 100 of the Constitution)

The Constitutional Court's ruling of 30 May 2003

Under the Constitution, the Government, which is composed of the Prime Minister and ministers, is a collegial institution of executive power.

The Prime Minister and ministers may not hold any other elective or appointive office, may not work in any business, commercial, or other private establishments or enterprises, nor may they receive any remuneration other than that established for their respective governmental duties and payment for creative activities (Article 99 of the Constitution). According to Paragraph 2 of Article 60 of the Constitution, the Prime Minister and ministers may be members of the Seimas at the same time.

It should also be noted that the Constitution establishes the immunity of the Prime Minister and ministers in order that the Government would perform, without hindrance, the duties assigned to it under the Constitution and laws. Article 100 of the Constitution provides that the Prime Minister and ministers may not be held criminally liable or be detained, or have their liberty restricted otherwise, without the prior consent of the Seimas or, in the period between the sessions of the Seimas, without the prior consent of the President of the Republic.

The competence of ministers to head the respective ministry (Paragraph 1 of Article 98 of the Constitution)

The Constitutional Court's ruling of 8 March 2018

Paragraph 1 of Article 98 of the Constitution prescribes: "Ministers shall head their respective ministry, shall decide on issues belonging to the competence of their ministry, and shall also discharge other functions provided for by law."

In this context, it should be noted that ministries are state governance institutions that have special competence; they are established or dissolved with a view to organising governance in various spheres; a ministry fulfils the functions of state governance in the area assigned to it by means of laws and other legal acts; in the said area, the ministry implements state policy; fulfilling their functions, ministries inevitably participate not only in governance legal relationships, but also in other legal relationships of varied nature (property relationships, employment relationships, etc.) (ruling of 3 June 1999).

It should also be noted that, besides the performance of state functions assigned to them, the authorities implementing state power also perform other activities, *inter alia*, related to the performance of internal administration functions (ruling of 13 May 2010). … it should be noted that, in the activity of a ministry, which carries out the functions of state governance in the area assigned to it and implements state policy in this area, there are, *inter alia*, also activities related to the performance of internal administration functions.

In its ruling of 23 November 1999, among other things, interpreting the provisions of Paragraph 1 of Article 98 of the Constitution, the Constitutional Court noted that the content of the provision "Ministers shall head their respective ministry" is composed of the following elements: under the procedure established by means of laws or other legal acts, a minister has the right to choose the staff members of the ministry and to recruit and dismiss them; a minister has the right to organise the work of the staff of the ministry in order that the functions established for the ministry by means of laws and other legal acts would be performed; a minister has the right to give instructions to all the staff of the ministry, who must carry them out; a minister has the right to apply disciplinary measures to the staff of the ministry if they fail to fulfil their duties or the instructions of the minister, or fail to fulfil them properly; a minister has the right to give incentives to all the staff of the ministry.

… the competence of a minister to head the respective ministry, which is consolidated in Paragraph 1 of Article 98 of the Constitution, includes, *inter alia*, certain internal administration powers with respect to the ministry and the establishments assigned to the area entrusted to the ministry (establishments under the ministry), including the right, under the procedure established by means of laws and other legal acts, to choose the staff of the ministry and the heads of the establishments assigned to the area entrusted to the ministry, to recruit and dismiss them, as well as the right to apply disciplinary measures to them or give them incentives.

… it should be mentioned that, under the Constitution, it is not allowed to establish such a legal regulation that would in general prevent a minister from exercising the powers arising from the provision "Ministers shall head their respective ministry" of Paragraph 1 of Article 98 of the Constitution, *inter alia*, the powers related to the internal administration of the ministry and the establishments assigned to the area entrusted to the ministry; in addition, such a legal regulation may not limit the possibilities of a minister, who exercises the constitutional powers conferred on him/her, to effectively control how the ministry that he/she is heading and for which he/she is responsible performs the functions assigned to this ministry, as well as how it carries out other activities (*inter alia*, internal administration) that are related to the functions assigned to this ministry.

In this context, it should be mentioned that Paragraph 1 of Article 98 of the Constitution does not specify the procedure under which a minister implements the competence provided for in the Constitution; this procedure is established in laws, government resolutions, or other legal acts (ruling of 23 November 1999).

The responsibility of ministers for their respective activities in the exercise of their powers to head the respective ministry (Paragraphs 2 and 3 of Article 5, Paragraph 2 of Article 30, Paragraph 2 of Article 96, Paragraph 1 of Article 98, Article 100, and Paragraph 2 of Article 128 of the Constitution)

The Constitutional Court's ruling of 8 March 2018

… when interpreting Paragraph 2 of Article 5 of the Constitution, which prescribes that the scope of power is limited by the Constitution, in conjunction with Paragraph 3 of the same article, which stipulates that state institutions serve the people, the Constitutional Court has noted that the Constitution is supreme law limiting state power and it consolidates the principle of responsible governance (*inter alia*, the rulings of 1 July 2004, 19 November 2015, and 2 March 2018); this principle implies that all state institutions and officials are obliged to follow the Constitution and law while performing their functions and must properly implement the powers granted to them by the Constitution and laws by acting in the interests of the Nation and the State of Lithuania (*inter alia*, the conclusion of 26 October 2012 and the rulings of 11 July 2014 and 22 December 2016).

In its ruling of 22 January 2008, revealing the content of one of the principles of the activity of public authority institutions and officials – the principle of transparency, arising from the Constitution, *inter alia*, Paragraphs 2 and 3 of Article 5 thereof, the Constitutional Court emphasised that it implies, among other things, accountability to the respective community and the responsibility of decision-making officials for their decisions; transparency is a necessary precondition, *inter alia*, for preventing the abuse of power; therefore, it is a necessary precondition for people to have trust in public authority institutions and the state in general; transparency as a principle of the activity of public authority institutions and officials implies, among other things, that adopted decisions must be well-grounded and clear so that, if the need arises, it would be possible to provide rational reasons for them; other persons must have the possibility of disputing these decisions in accordance with the established procedure.

… it should be noted that, under the Constitution, *inter alia*, Paragraphs 2 and 3 of Article 5 thereof, as well as under the constitutional principle of responsible governance, ministers, when exercising the internal administration powers conferred on them by the Constitution and laws with respect to the ministry and the establishments assigned to the area entrusted to the ministry, must properly implement these powers conferred on them by the Constitution and laws, *inter alia*, they must adopt lawful and justified decisions when implementing these powers.

The responsibility of the authorities to society is inseparable from the constitutional principle of a state under the rule of law; this responsibility is constitutionally consolidated by having stipulated that state institutions serve the people and that the scope of power is limited by the Constitution (*inter alia*, the conclusion of 31 March 2004 and the rulings of 13 May 2015 and 19 November 2015).

Paragraph 2 of Article 96 of the Constitution provides that ministers, in directing the areas of governance assigned to them, are responsible to the Seimas and the President of the Republic, and are directly

subordinate to the Prime Minister. Under Paragraph 1 of Article 101 of the Constitution, ministers must give an account of their activities to the Seimas.

In its ruling of 24 December 2002, the Constitutional Court held that, under the Constitution, the Seimas exercises parliamentary control over the Government; the separation of powers in the Constitution also implies the accountability of the Government, a collegial executive authority institution, to the legislative power – the representation of the Nation.

It should be noted in this context that the Constitution provides for the immunity of the Prime Minister and ministers in order that the Government could perform without hindrance the duties assigned to it under the Constitution and laws. Article 100 of the Constitution provides that the Prime Minister and ministers may not be held criminally liable or be detained, or have their liberty restricted otherwise, without the prior consent of the Seimas or, in the period between the sessions of the Seimas, without the prior consent of the President of the Republic (ruling of 30 May 2003).

… it should be noted that the Constitution consolidates the political responsibility of ministers to the Seimas, the President of the Republic, and the Prime Minister for directing the areas of governance assigned to them, and that Article 100 of the Constitution provides for the immunity of ministers in cases where criminal responsibility or the restriction of liberty is applied.

It should be noted that the Constitution does not contain other provisions that would establish the exclusive status of ministers compared to other subjects to whom legal responsibility is applied on the basis of the general grounds provided for by law. Consequently, in view of the overall legal regulation consolidated in the Constitution, there are no grounds for stating that, under the Constitution, other rules of legal responsibility are applicable to ministers (except for the immunity, provided for in Article 100 of the Constitution, in cases where criminal responsibility or the restriction of liberty is applied) if compared to other persons.

A different interpretation of the provisions of the Constitution, *inter alia*, of those of Paragraph 2 of Article 96 and Article 100 thereof, that, purportedly, under the Constitution, also other immunity from legal responsibility (except for the immunity provided for in Article 100 of the Constitution) is applicable to ministers would be inconsistent with the constitutionally consolidated responsibility of the authorities to society, with the provisions of Paragraphs 2 and 3 of Article 5 of the Constitution, as well as with the constitutional principles of responsible governance and a state under the rule of law, and would imply a privilege, which is prohibited under Paragraph 2 of Article 29 of the Constitution.

In its ruling of 23 November 1999, interpreting, among other things, the provision “Ministers shall head their respective ministry” of Paragraph 1 of Article 98 of the Constitution, the Constitutional Court held the following:

– the competence of a minister to head the respective ministry, as established in Paragraph 1 of Article 98 of the Constitution, implies the personal responsibility of the minister for the activities of the ministry;

– a minister, who is empowered to head the respective ministry under Paragraph 1 of Article 98 of the Constitution, is also responsible for the activity of all the ministry headed by him/her and for the execution of laws, government resolutions, and other legal acts; thus, a minister is also responsible for the economic and financial activity of the respective ministry regardless of the nature of this activity.

… in the activity of a ministry, which carries out the functions of state governance in the area assigned to it and implements state policy in this area, there are, *inter alia*, activities related to the performance of internal administration functions. … under the Constitution, a minister, among other things, has the powers, under the procedure established by means of laws and other legal acts, to choose the heads of the establishments assigned to the area entrusted to his/her ministry and to recruit and dismiss them.

… it should be noted that the personal responsibility of a minister, implied by the provision “Ministers shall head their respective ministry” of Paragraph 1 of Article 98 of the Constitution, means the personal responsibility of a minister for all his/her activities, *inter alia*, for the proper exercise of the internal administration powers conferred on him/her with respect to the ministry and the establishments assigned to

the area entrusted to the ministry (for instance, the powers to dismiss the staff members of the ministry, as well as the heads of the establishments assigned to the area entrusted to the ministry).

[…]

… under the Constitution, *inter alia*, Paragraph 3 of Article 5 and Paragraph 2 of Article 30 thereof, as well as under the constitutional principle of a state under the rule of law, a person who has suffered material and/or moral damage as a result of the unlawful actions committed by state authority institutions or officials must be compensated for this damage, while taking into account the reasonable and justified criteria established by law in order to determine the amount of the damage. … this duty of the state is to be interpreted as including the obligation to compensate a person for the material and/or moral damage suffered by him/her as a result of the unlawful actions committed by a minister in the exercise of the internal administration powers with respect to the ministry and the establishments assigned to the area entrusted to the ministry.

[…]

… under the Constitution, *inter alia*, the constitutional principles of responsible governance and a state under the rule of law, if state officials, *inter alia*, ministers, when improperly exercising the powers conferred on them by the Constitution and laws, by their unlawful actions (or inaction), inflict material and/or moral damage on persons, such their actions cannot be equated with the actions (or inaction) of the state itself (or institutions thereof), and state officials, *inter alia*, ministers, who have inflicted damage must be liable in the prescribed manner for their actions by which they have caused the damage.

[…]

… under the Constitution, *inter alia*, Paragraph 3 of Article 5, Paragraph 2 of Article 30, and Paragraph 2 of Article 128 thereof, as well as under the constitutional principles of responsible governance and a state under the rule of law, in order to ensure the proper respect for the interests of all society, it is necessary to create the preconditions for the state, after it has fulfilled (through its institutions) its constitutional duty to compensate a person for the material and/or moral damage inflicted by the unlawful actions (or inaction) of state institutions and officials, *inter alia*, ministers, for obtaining reimbursement for the losses (in whole or in part), suffered due to this by the state, from the state officials, *inter alia*, ministers, who have improperly exercised the powers conferred on them by the Constitution and laws. This is the only way to ensure that the property owned by the state will serve the common welfare of the Nation. Meanwhile, without creating such preconditions, it would not be ensured, *inter alia*, that the state officials, *inter alia*, ministers, who have caused damage would be held liable for their actions according to the established procedure and, thus, that people would have trust in public authority institutions and the state in general; this would be incompatible with the Constitution, *inter alia*, the constitutional principles of responsible governance and the rule of law.

As mentioned before, under the Constitution, if a person has suffered material and/or moral damage as a result of the unlawful actions committed by state institutions or officials, this damage must be compensated for, taking into account the reasonable and justified criteria established by law, in order to determine the amount of this damage. … the above-mentioned provisions of the official constitutional doctrine are also *mutatis mutandis* applicable to regulating, by means of a law, the duty of the state to compensate for damage caused as a result of the unlawful actions committed by a minister in the exercise of internal administration powers with respect to the ministry and the establishments assigned to the area entrusted to the ministry, as well as to regulating, by means of a law, the procedure for implementing the right of the state to recourse against the person – the minister – who has caused the damage.