8. THE CONSTITUTIONAL COURT

8.1. THE CONSTITUTIONAL COURT AS THE INSTITUTION OF CONSTITUTIONAL JUSTICE

The constitutional status of the Constitutional Court (as the institution of constitutional justice)

The Constitutional Court's ruling of 6 June 2006

The courts that, under the Constitution, implement judicial power in Lithuania must be categorised as belonging not to one, but to two or more (if this, taking account of the Constitution, is established in the respective laws) systems of courts. Under the Constitution and laws, there are three systems of courts in Lithuania at present: (1) the Constitutional Court carries out constitutional judicial control; (2) the Supreme Court of Lithuania, the Court of Appeal of Lithuania, regional courts, and district courts, which are specified in Paragraph 1 of Article 111 of the Constitution, constitute the system of courts of general jurisdiction; (3) under Paragraph 2 of Article 111 of the Constitution, for the consideration of administrative, labour, family, and cases of other categories, specialised courts may be established according to the law; one system of specialised courts, i.e. administrative ones, which is composed of the Supreme Administrative Court of Lithuania and regional administrative courts, is established and is functioning at present (rulings of 13 December 2004, 16 January 2006, 28 March 2006, and 9 May 2006).

[…]

The Constitution defines the procedure for the formation of the Constitutional Court, establishes the grounds and guarantees of the implementation (activity) of the powers of the Constitutional Court, consolidates the status of the justices of the Constitutional Court, etc.

Thus, under the Constitution, the Constitutional Court is the institution of constitutional justice, which carries out constitutional judicial control (rulings of 28 March 2006 and 9 May 2006). The Constitutional Court has held in its acts on more than one occasion that, when deciding, under its competence, on the compliance of lower-ranking legal acts (parts thereof) with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution, as well as when exercising its other constitutional powers, the Constitutional Court – an autonomous and independent court – administers constitutional justice, as well as guarantees constitutional lawfulness and the supremacy of the Constitution in the legal system (rulings of 12 July 2001, 29 November 2001, 13 December 2004, and 28 March 2006).

It needs to be noted that the title – the Constitutional Court – of the constitutional justice institution, which is assigned the exercise of constitutional judicial control, is *expressis verbis* consolidated in the Constitution itself.

It should be emphasised that, by its constitutional nature, a state power institution that is named a court in the Constitution itself must be regarded as a court, i.e. as a judicial institution.

[…]

The mere fact that there are separate Chapters "Courts" and "The Constitutional Court" in the Constitution is not and may not be the grounds for interpreting that, purportedly … the Constitutional Court is not a court – part of the judiciary – and exists somewhere outside the boundaries of the judicial system. Such a presumption … is essentially wrong and completely constitutionally unfounded. On the contrary, the fact that, in the Constitution, there are two separate chapters – Chapter VIII "The Constitutional Court" and Chapter IX "Courts" – does not deny the fact that the Constitutional Court, which, under the Constitution, carries out constitutional judicial control, is part of the judicial system, but it rather emphasises its particular status in the system of the judiciary, as well as in the system of all state institutions exercising state power; in this way, the particularities of the constitutional mission and competence of the Constitutional Court are emphasised.

At the same time, it needs to be noted that there are significant links between courts of general jurisdiction and specialised courts (established under Paragraph 2 of Article 111 of the Constitution) on the one hand, and, on the other hand, the Constitutional Court, the institution of constitutional justice, *inter alia*: every court of general jurisdiction (its judge) and every specialised court (its judge), as a petitioner, has the right to initiate constitutional justice cases at the Constitutional Court on the grounds established in the Constitution (Paragraphs 1, 2, and 3 of Article 106 and Paragraph 2 of Article 110); all courts of general jurisdiction – the Supreme Court of Lithuania, the Court of Appeal of Lithuania, regional courts, and district courts – as well as specialised courts (Supreme Administrative Court of Lithuania and regional administrative courts), are bound by the fact that, under Article 107 of the Constitution, the decisions on the issues assigned to the competence of the Constitutional Court are final and not subject to appeal; all courts of general jurisdiction and specialised courts are bound by the official constitutional doctrine, which is formed in the jurisprudence of the Constitutional Court, etc. However, as regards the organisational and administrative aspects, the said systems of courts – the Constitutional Court, which carries out constitutional judicial control, and courts of general jurisdiction and specialised courts (established under Paragraph 2 of Article 111 of the Constitution) – are separated in the Constitution.

It should be emphasised that the presumption … that the Constitutional Court is not a court and does not implement state power is not at all in line with the concept of power and the powers of the Constitutional Court established in the Constitution. The fact that, under the Constitution, the Constitutional Court has the powers to declare legal acts of other institutions that implement state power – the Seimas, the President of the Republic, the Government – to be in conflict with higher-ranking legal acts, first of all, with the Constitution, and, thus, to annul the legal force of such unconstitutional legal acts and to remove them from the Lithuanian legal system for good, as well as the fact that only the Constitutional Court has the constitutional powers to interpret the Constitution officially – to present the concept of the provisions of the Constitution and such a concept is binding on all law-making and law-applying institutions, including the Seimas, the representation of the Nation, clearly shows that the Constitutional Court is an institution implementing state power.

The status of the Constitutional Court and the procedure for the execution of its powers must be established by the Law on the Constitutional Court (Paragraph 2 of Article 102 of the Constitution)

The Constitutional Court's ruling of 25 October 2011

… when interpreting Paragraph 2 of Article 102 of the Constitution, which prescribes that the status of the Constitutional Court and the procedure for the execution of its powers are established by the Law on the Constitutional Court, the Constitutional Court held in its ruling of 28 March 2006 that, under the Constitution, the legislature has the duty to regulate, by means of a law, all relationships in connection with the status, formation, execution of powers (activity), and guarantees of the Constitutional Court, the status of the justices of the Constitutional Court, as well as the execution of decisions adopted by the Constitutional Court; the title of this law – the Law on the Constitutional Court – is *expressis verbis* consolidated in the Constitution. The Constitutional Court also noted that, in itself, such a constitutional legal regulation does not mean that certain relationships connected with the aforementioned relationships may not in general be regulated also by means of other laws.

8.2. THE CONSTITUTIONAL STATUS OF THE JUSTICES OF THE CONSTITUTIONAL COURT

Appointing the justices of the Constitutional Court and the beginning of their term of office (Article 103 and Paragraph 2 of Article 104 of the Constitution); the limitations established on the work and political activities of the justices of the Constitutional Court (Paragraph 3 of Article 104 and Article 113 of the Constitution)

The Constitutional Court's ruling of 2 June 2005

The procedure for the appointment of the justices of the Constitutional Court is *expressis verbis* established in the Constitution.

Paragraph 3 of Article 103 of the Constitution provides that the citizens of the Republic of Lithuania with an impeccable reputation, higher education in law, and not less than a 10-year length of service in the field of law or in a branch of science and education as a lawyer may be appointed as justices of the Constitutional Court. Under Paragraph 1 of the same article, the President of the Republic, the Speaker of the Seimas, and the President of the Supreme Court present candidates for justices of the Constitutional Court; the Seimas appoints the justices of the Constitutional Court; every three years, one-third of the Constitutional Court is reconstituted.

It needs to be emphasised that, under the Constitution, when the justices of the Constitutional Court are appointed, only the following subjects, *expressis verbis* specified in the Constitution, have the respective powers: (1) the state official (President of the Republic, the Speaker of the Seimas, and the President of the Supreme Court) who proposes a candidate for the post of a justice of the Constitutional Court to the Seimas; (2) the Seimas, which adopts a decision concerning the appointment of a proposed candidate for the post of a justice of the Constitutional Court.

Under the Constitution, no institution and no official has the powers to deny or limit the constitutional right of the President of the Supreme Court (as well as that of other state officials – the President of the Republic and the Speaker of the Seimas (specified in Paragraph 1 of Article 103 of the Constitution) – who submit candidates for justices of the Constitutional Court) to submit to the Seimas a candidate for justices of the Constitutional Court, or the right of the Seimas to appoint a submitted candidate as a justice of the Constitutional Court or not to appoint him/her. If such powers were established by means of a law or another legal act, the preconditions would be created for impeding the reconstitution of the Constitutional Court – an institution of state power consolidated in the Constitution – under the procedure established in the Constitution.

Paragraph 3 of Article 104 of the Constitution provides that the limitations established on work and political activities for the judges of courts also apply to the justices of the Constitutional Court. Under Article 113 of the Constitution, judges may not hold any other elective or appointive office, or work in any business, commercial, or other private establishments or enterprises (Paragraph 1); nor may they receive any remuneration other than the remuneration established for judges and payment for educational or creative activities (Paragraph 1); judges may not participate in the activities of political parties or other political organisations (Paragraph 2).

The said limitations are applied to a justice of the Constitutional Court from the day when he/she takes up office. Under Paragraph 2 of Article 104 of the Constitution, before entering office, the justices of the Constitutional Court take an oath at the Seimas to be faithful to the Republic of Lithuania and the Constitution.

[…]

The Constitution establishes such a legal regulation under which an appointed justice of the Constitutional Court must remove incompatibilities with the office of a justice of the Constitutional Court (Paragraph 3 of Article 104 and Article 113 of the Constitution) until he/she takes an oath at the Seimas. If the removal of the said incompatibilities depends upon decisions of certain institutions (officials), these institutions (officials) have the duty to adopt the respective decisions until the appointed justice of the Constitutional Court takes an oath at the Seimas. Otherwise, the appointed justice of the Constitutional Court would be impeded from taking the office of a justice of the Constitutional Court; thus, the reconstitution of the Constitutional Court – an institution of state power consolidated in the Constitution, which must be carried out in accordance with the procedure established in the Constitution, would be impeded.

It needs to be stressed that the Constitution does not contain any provisions requiring that a person nominated for the post of a justice of the Constitutional Court should, prior to voting on his/her nomination for the said post at the Seimas, refuse his/her occupation or the office that he/she is holding, or remove other incompatibilities with the office of a justice of the Constitutional Court that are specified in the Constitution.

It also needs to be emphasised that an appointed justice of the Constitutional Court, as long as he/she has not taken an oath at the Seimas in accordance with the established procedure, does not hold the office of a justice of the Constitutional Court. At that time, the office of a justice of the Constitutional Court is held by the justice of the Constitutional Court whose term of office is expiring.

[…]

Thus, if a person appointed as a justice of the Constitutional Court holds the office of a judge of a certain court of the Republic of Lithuania at the time of his/her appointment, he/she must be released from his/her duties before his/her oath at the Seimas. If a person who is appointed as a justice of the Constitutional Court holds the office of a justice of the Supreme Court at the time of his/her appointment, the President of the Republic has the constitutional duty to make the submission that the Seimas release this appointed justice of the Constitutional Court from the office of a justice of the Supreme Court before he/she takes the oath of a justice of the Constitutional Court at the Seimas, while the Seimas has the constitutional duty to release the said person from his/her duties before his/her oath at the Seimas. Otherwise, the appointed justice of the Constitutional Court would be impeded from taking the office of a justice of the Constitutional Court; thus, the reconstitution of the Constitutional Court – an institution of state power consolidated in the Constitution, which must be carried out in accordance with the procedure established in the Constitution, would be impeded.

The cessation of the powers of a justice of the Constitutional Court (Article 108 of the Constitution)

The Constitutional Court's decision of 15 May 2009

Under Article 108 of the Constitution, the powers of a justice of the Constitutional Court cease: upon the expiry of the term of powers (Item 1); upon his/her death (Item 2); upon his/her resignation (Item 3); when he/she is incapable of holding office due to the state of his/her health (Item 4); when the Seimas removes him/her from office in accordance with the procedure for impeachment proceedings (Item 5).

Under Articles 74 and 116 of the Constitution, the President and justices of the Supreme Court, the President and judges of the Court of Appeal, and, under Article 74 of the Constitution, also the President and justices of the Constitutional Court, who grossly violate the Constitution or breach their oath, or are found to have committed a crime, may be removed from office by the Seimas according to impeachment proceedings.

Under the Constitution, one of the grounds for the release of judges from their duties (cessation of the powers of judges) is the expiry of the term of the powers of a judge.

It needs to be noted that the Constitution defines the consequences of the juridical fact of the expiry of the term of the powers of a judge or a justice of the Constitutional Court by means of different phrases: "judges are released from their duties according to the procedure established by law" (Article 115), "the powers of a justice of the Constitutional Court shall cease" (Article 108).

When interpreting the phrase "judges are released from their duties according to the procedure established by law" of the Constitution, it needs to be noted that this phrase means that, after the juridical fact – the expiry of the term of the powers of a judge – takes place, the institution that is provided for in the Constitution, i.e. the President of the Republic, or both the President of the Republic and the Seimas, has the duty to verify that such a juridical fact has taken place and, upon stating the existence of this fact, to adopt, in accordance with the procedure established by law, the respective decision (i.e. an individual act of the application of law) whereby the judge or President of a court whose term of the powers has expired would be released from the office of the judge or President of that court.

When interpreting the phrase "the powers of a justice of the Constitutional Court shall cease" of the Constitution, it needs to be noted that, after the juridical fact – the expiry of the term of the powers of a justice of the Constitutional Court – takes place, no institution has the duty to state the existence of such a juridical fact and adopt the respective decision (i.e. an individual act of the application of law) whereby a justice of the Constitutional Court would be released from his/her duties.

It needs to be noted that the Constitution consolidates the final list of grounds for releasing judges from their duties (i.e. the cessation of powers) and that this list must not be expanded by means of laws or other legal acts (ruling of 22 October 2007).

The length of the term of office of the justices of the Constitutional Court (Paragraph 1 of Article 103 of the Constitution)

The Constitutional Court's ruling of 29 June 2010

… the justices of the Constitutional Court also differ from other judges of courts of general and specialised competence from the aspect of the term of their office. Under Paragraph 1 of Article 103 of the Constitution, the justices of the Constitutional Court are appointed for a single nine-year term of office. Under the Constitution, the Law on Courts establishes the terms of office of judges of both courts of general competence and specialised courts. … while regulating the relationships of the social (material) guarantees of judges after the powers of judges cease, *inter alia*, when differentiating these guarantees, account must be taken of the fact that the classification of courts as belonging not to one, but, rather, to several (at present – three) systems of courts stems from the Constitution; a separate system of courts is comprised of the Constitutional Court, characterised by its own particularities, *inter alia*, from the aspect of the term of office of the justices of the Constitutional Court.

… the legislature, while regulating the relationships of the social (material) guarantees of judges upon the expiry of their term of powers, must also take account of the fact that the justices of the Constitutional Court differ from judges of other courts as regards their constitutional status, *inter alia*, the term of powers. Otherwise, the constitutional concept of these social (material) guarantees, under which the social (material) guarantees of judges must be differentiated by taking account, *inter alia*, of the specificity of the system of courts and the particularities of the status of judges of the systems of courts, would be deviated from.

The immunity of justices of the Constitutional Court (Paragraph 4 of Article 104 of the Constitution)

The Constitutional Court's ruling of 9 March 2020

The immunity of the justices of the Constitutional Court is consolidated in Paragraph 4 of Article 104, which is in Chapter VIII "The Constitutional Court" of the Constitution; under the said article, the justices of the Constitutional Court have the same rights concerning the inviolability of their person as the members of the Seimas. In this context, it should be noted that, according to Paragraph 1 of Article 104 of the Constitution, while in office, the justices of the Constitutional Court are independent of any other state institution, person, or organisation and follow only the Constitution of the Republic of Lithuania. Thus, the immunity of the justices of the Constitutional Court, as consolidated in Paragraph 4 of Article 104 of the Constitution, is the guarantee of their independence while they are in office.

In this context, it should be noted that Paragraph 1 of Article 62 of the Constitution provides that the person of a member of the Seimas is inviolable. The Constitutional Court has held that Paragraph 1 of Article 62 of the Constitution is related to Paragraph 2 of this article, under which the members of the Seimas may not be held criminally responsible or be detained, or have their liberty restricted otherwise, without the consent of the Seimas (ruling of 8 May 2000). The Constitutional Court has also held that, although the Constitution provides for the additional guarantees of the inviolability of a member of the Seimas compared with the guarantees of the inviolability of an individual, the scope of the immunity of a member of the Seimas is, nevertheless, narrower than that of the President of the Republic, i.e. the right of a member of the Seimas to liberty and the inviolability of his/her person during his/her term of office may be limited; as mentioned before, under Paragraph 2 of Article 62 of the Constitution, this can only be done with the consent of the Seimas (ruling of 8 May 2000).

The Constitutional Court has also held that Paragraph 2 of Article 62 of the Constitution consolidates the additional guarantees of the inviolability of the person of a member of the Seimas, which are necessary

for the proper performance of his/her duties (*inter alia*, the rulings of 8 May 2000, 25 January 2001, and 27 April 2016).

In view of this, it should be noted that, under Paragraph 4 of Article 104 of the Constitution, a justice of the Constitutional Court may not be held criminally responsible or be detained, or have his/her liberty restricted otherwise, without the consent of the Seimas.

It should also be noted that, under Paragraph 4 of Article 104 of the Constitution as interpreted in conjunction with Paragraph 1 of Article 104 of the Constitution, the immunity of the justices of the Constitutional Court, in the same way as the immunity of judges as consolidated in Paragraph 2 of Article 114 of the Constitution, is functional in nature: its purpose is to guarantee the independence of the justices of the Constitutional Court, so that the administration of constitutional justice is ensured and the supremacy of the Constitution in the legal system, as well as constitutional lawfulness, is guaranteed. Thus, there are no constitutional grounds for the scope of the immunity of the justices of the Constitutional Court, which is consolidated in Paragraph 4 of Article 104 of the Constitution, to be interpreted differently from the scope of the immunity of judges, which is consolidated in Paragraph 2 of Article 114 of the Constitution. However, differently from Paragraph 2 of Article 114 of the Constitution, Paragraph 4 of Article 104 of the Constitution does not provide for the possibility of holding a justice of the Constitutional Court criminally responsible or detaining him/her, or restricting his/her liberty otherwise, with the consent of the President of the Republic in the period between the sessions of the Seimas. It should also be noted that the requirement, under Paragraph 4 of Article 104 of the Constitution, to receive the consent of the Seimas in order that the justices of the Constitutional Court could be held criminally responsible or be detained, or have their liberty restricted otherwise, is consolidated for the purpose of enabling the maximum protection of the justices of the Constitutional Court against unfoundedly being held criminally responsible, being detained, or having their liberty restricted otherwise in cases where it would thereby be sought to influence the decisions of the justices.

8.3. THE POWERS OF THE CONSTITUTIONAL COURT

8.3.1. The powers of the Constitutional Court to exercise control over the constitutionality of legal acts

The powers of the Constitutional Court to investigate the compliance of legal acts with higher-ranking legal acts (Article 105 of the Constitution)

The Constitutional Court's ruling of 5 April 2000

… under Article 105 of the Constitution, if a petition substantiated with legal reasoning is filed by the subjects pointed out in Article 106 of the Constitution, the Constitutional Court may and must consider and adopt decisions on the conformity of any law or legal act adopted by the Seimas with the Constitution, as well as decisions on the conformity of any act adopted by the President of the Republic or by the Government with the Constitution and laws, irrespective of the fact whether such a legal act is (would be) marked "top secret", "secret", "confidential", or marked in any other way.

The powers of the Constitutional Court to declare the unconstitutionality of a law that is not impugned by a petitioner but on which an impugned substatutory act is based (Article 105 of the Constitution)

The Constitutional Court's ruling of 29 November 2001

Under Article 105 of the Constitution, the Constitutional Court considers and adopts decisions on whether legal acts are in conflict with the Constitution. Thus, the Constitutional Court implements constitutional justice. The implementation of constitutional justice implies that a legal act (part thereof) that is in conflict with the Constitution must be removed from the legal system. Therefore, after it has established that a law the compliance of which with the Constitution is not challenged by a petitioner, but upon which

an impugned substatutory act is based, is in conflict with the Constitution, the Constitutional Court must state that such a law is unconstitutional. Such an obligation of the Constitutional Court stems from the Constitution; in this way, the supremacy of the Constitution is ensured.

The powers of the Constitutional Court to declare the unconstitutionality of such provisions of a law not impugned by a petitioner that regulate part of the relationships covered by an impugned law

The Constitutional Court's ruling of 14 January 2002

Having found that the provisions of a law whose compliance with the Constitution is not impugned by a petitioner, but which regulate part of the social relationships covered by an impugned law, are in conflict with the Constitution, the Constitutional Court must state that such provisions are unconstitutional.

The Constitutional Court investigates the compliance of impugned legal acts with the Constitution as an integral and harmonious system

The Constitutional Court's ruling of 30 May 2003

In cases where, following a received petition, the Constitutional Court investigates whether the impugned legal act (part thereof) is in conflict with the articles (parts thereof) of the Constitution indicated in the petition, it at the same time investigates whether the impugned legal act (part thereof) is in conflict with the Constitution – an integral and harmonious system (ruling of 24 December 2002).

In its ruling of 13 June 2000, the Constitutional Court held that … the Constitutional Court, having found that an impugned legal act (part thereof) is in conflict with the articles (parts thereof) of the Constitution not indicated by the petitioner, has the powers to state this fact.

The recognition that legal acts are in conflict with the Constitution in terms of their form

The Constitutional Court's ruling of 13 December 2004

… such failure to adhere to the form of a legal act where the Constitution requires that certain relationships be regulated by means of a law, but they are still regulated by means of a substatutory act (irrespective of whether such relationships are, from any aspect, additionally regulated in a law and the legal regulation laid down in a substatutory act competes with the legal regulation established in that law, or irrespective of the fact that no law regulates such relationships at all), may provide the sufficient grounds for declaring such a substatutory legal act unconstitutional. Under the Constitution, it is the Constitutional Court that decides whether the substatutory legal acts of the Seimas, the President of the Republic, or the Government, in terms of their form, are in conflict with the Constitution. When making such a decision, the Constitutional Court assesses in every case all circumstances of the case, *inter alia*, the place of the reviewed legal regulation in the entire legal system, its objective, as well as the intentions of the respective law-making subject, the development of the legal regulation of the respective relationships and its changes before the legal act at issue was passed (legislative history), etc.

It should also be stressed that, in cases where substatutory legal acts are ruled to be in conflict with the Constitution in terms of their form (due to the fact that they regulate such relationships that may be regulated only by means of a law) and may no longer be applied, it is necessary to pay regard to the requirement, arising from the Constitution, to assess whether other values protected by the Constitution would be violated, or whether the balance among the values consolidated, protected, and defended by the Constitution would be disturbed in the case of failure to protect and defend those rights of persons that were acquired during the period of the validity of the said substatutory legal acts. In these special cases, the legislature, having assessed all circumstances and having found that this is necessary, is under the constitutional obligation to establish such a legal regulation that would provide for the possibility of protecting and defending, fully or partially, the rights of persons who had obeyed law, followed the requirements of laws, and trusted in the state and its law in cases where their acquired rights had arisen from the legal acts that were subsequently ruled to be in conflict with the Constitution in terms of their form (due to the fact that they regulated such relationships

that could be regulated only by means of a law); such a legal regulation established by the legislature must ensure that the principle of justice, enshrined in the Constitution, would not be derogated from.

The powers of the Constitutional Court to investigate the compliance of all laws and other acts adopted by the Seimas, the President of the Republic, or the Government with all higher-ranking legal acts (Paragraph 1 of Article 102 of the Constitution)

The Constitutional Court's ruling of 28 March 2006

… Paragraph 1 of Article 102 of the Constitution may not be interpreted (by applying only the linguistic method, literally) as meaning that it provides a comprehensive and final list of legal acts whose investigation in terms of their compliance with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution, as well as the adoption of the respective decisions, is assigned, under the Constitution, to the jurisdiction of the Constitutional Court. Paragraph 1 of Article 102 of the Constitution should be interpreted by taking account of the whole context of the constitutional legal regulation: *inter alia*, by paying regard to the principle of the separation of powers; the mission and place of the Constitutional Court in the system of state institutions that exercise judicial power (and those that exercise state power in general) and are consolidated in the Constitution; the constitutionally consolidated institution of constitutional laws (which, under Constitution, have higher legal force than ordinary laws); the provisions of the Constitution under which laws (provisions thereof) or other legal acts may also be adopted by referendum (Paragraph 1 of Article 9, Paragraph 4 of Article 69, and Paragraphs 3 and 4 of Article 71 of the Constitution); the constitutional duty of the President of the Republic to perform everything with which he/she is charged by the Constitution and laws (Paragraph 2 of Article 77 of the Constitution); the constitutional duty of the Government to execute laws, the resolutions of the Seimas on the implementation of laws, as well as the decrees of the President of the Republic (Item 2 of Article 94 of the Constitution); the principle of the supremacy of the Constitution and a state under the rule of law, which, in addition to most other things, imply the hierarchy of all legal acts and the prohibition that arises from the said hierarchy on establishing in lower-ranking legal acts any such a legal regulation that would compete with a legal regulation established in higher-ranking legal acts (first of all, in the Constitution itself) or on applying any legal acts that are in conflict with higher-ranking legal acts; as well as by paying regard to the possibility of removing from the legal system such legal acts (parts thereof) that do not meet the said requirements, thus, by taking into consideration both the mission of constitutional judicial control as a constitutional institution and the contextual meaning of the constitutional provisions that consolidate it. In this way interpreting Paragraph 1 of Article 102 of the Constitution in the context of the overall constitutional legal regulation, it should be held that, under the Constitution, the Constitutional Court has the exclusive competence to investigate and decide on whether any act adopted by the Seimas, the President of the Republic, or the Government, as well as any act (part thereof) adopted by referendum, is in conflict with any higher-ranking act, *inter alia* (and, first of all), with the Constitution, namely: whether any constitutional law (part thereof) is in conflict with the Constitution; whether any law (part thereof) or the Statute of the Seimas (part thereof) is in conflict with the Constitution and constitutional laws; whether any substatutory legal act (part thereof) adopted by the Seimas is in conflict with the Constitution, constitutional laws, laws, and the Statute of the Seimas; whether any act (part thereof) adopted by the President of the Republic is in conflict with the Constitution, constitutional laws, and laws; and whether any act (part thereof) adopted by the Government is in conflict with the Constitution, constitutional laws, and laws.

[…]

… a different, literal interpretation of Paragraph 1 of Article 102 of the Constitution would mean that, purportedly, the Constitution tolerates its own disregard when certain legal acts (for example, constitutional laws or the Statute of the Seimas) are adopted, that, purportedly, under the Constitution, it is possible to disregard constitutional laws when laws are passed and to disregard laws and constitutional laws when certain substatutory legal acts (for example, those of the Seimas) are passed, and that, purportedly, under the Constitution, it is possible to disregard the Constitution when laws (provisions thereof) or other legal acts

are adopted by referendum. Thus, lower-ranking legal acts (parts thereof) that have one-off (ad hoc) application and are passed by the Seimas, the President of the Republic, or the Government would, in general, avoid the verification of their compliance with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution. A literal (let alone narrowing) interpretation of Paragraph 1 of Article 102 of the Constitution would be completely unreasonable, since it would deny the principle of the supremacy of the Constitution, the constitutional principle of a state under the rule of law, the hierarchy of all legal acts, which stems from the Constitution (and which implies, *inter alia*, the compliance of substatutory legal acts with laws), the provision of Paragraph 1 of Article 7 of the Constitution that any law or other act that contradicts the Constitution is invalid, the provision of Paragraph 2 of Article 5 of the Constitution that the scope of powers is limited by the Constitution, and the provision of Paragraph 1 of Article 6 of the Constitution that everyone may defend his/her rights by invoking the Constitution. If merely the said literal interpretation of Paragraph 1 of Article 102 of the Constitution were followed, the preconditions would also be created for violating other values (*inter alia*, the constitutional rights of a person) that are consolidated, defended, and protected by the Constitution. In this context, it should also be noted that, if the Constitution were interpreted only literally by applying the linguistic method, it could not be the supreme law of Lithuania, as it would be virtually identified with its textual form – the letter of the Constitution would be made absolute and the spirit of the Constitution would be ignored.

The Constitutional Court investigates a legal regulation that is consolidated in legal acts both explicitly and implicitly

The Constitutional Court's decision of 8 August 2006

Legal acts (including those whose compliance with higher-ranking legal acts is decided by the Constitutional Court according to the Constitution) are sources of law created by the respective institutions of public power or by referendum; such legal acts consolidate law – legal provisions set out in a certain textual form. Legal acts as sources of law are passed, amended (supplemented), and repealed by means of decisions adopted by the respective institutions or by general vote (referendum). Thus, legal acts (including those whose compliance with higher-ranking legal acts is decided by the Constitutional Court according to the Constitution) are always the results of certain institutional law-making decisions (actions) (in the broadest meaning of the term "institutional", which also includes legal acts adopted by referendum). If there is no law-making decision (on a legal regulation of certain social relationships), a legal act cannot be passed, amended (supplemented), or repealed. This is what makes legal acts different from such sources of law as, for instance, legal customs, which come into being (are created) not as a result of institutional law-making decisions (actions), but on other grounds.

All legal acts are expressed in a certain textual form and have certain linguistic expression. However, as held by the Constitutional Court, it is impossible to treat law solely as a text in which certain legal provisions and rules of behaviour are set out *expressis verbis*; it is impossible to treat legal reality solely in its textual form – only as an aggregate of its explicit provisions (ruling of 25 May 2004). Therefore, while investigating the compliance of legal acts (parts thereof) passed by the Seimas, the President of the Republic, or the Government and those adopted by referendum with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution, the Constitutional Court investigates a legal regulation that is explicitly, *expressis verbis*, consolidated in those legal acts (parts thereof), as well as such a legal regulation that is consolidated in those legal acts (parts thereof) implicitly and is derived from explicit legal provisions in the course of interpreting law.

When investigating the compliance of legal acts (parts thereof) passed by the Seimas, the President of the Republic, or the Government and those adopted by referendum with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution, the Constitutional Court must establish and, if this is necessary in view of the logic of a constitutional justice case under consideration, state whether a certain legal regulation laid down in the respective lower-ranking legal act (part thereof) is consolidated explicitly or is not consolidated explicitly. It needs to be emphasised that the non-establishment of a certain explicit legal

regulation (lack of a legal regulation, the absence of the respective explicit provisions) in a legal act (part thereof) under investigation in a constitutional justice case does not yet mean that the said legal act (part thereof) does not regulate the respective social relationships at all, nor that those social relationships are not regulated by any other legal acts. It also needs to be noted that the non-establishment of a certain explicit legal regulation in a reviewed legal act (part thereof) may be related to various legal situations: in some cases, the non-establishment of a certain explicit legal regulation precisely in a concrete legal act (precisely in a concrete part thereof) is determined by the fact that the respective legal provisions are explicitly or implicitly consolidated in another legal act (or in other parts of the same legal act); in other cases, the absence of explicit legal norms regulating certain social relationships in a concrete legal act (part thereof), provided they are neither explicitly nor implicitly consolidated in other legal acts (or in other parts of the same legal act), should be treated as the establishment of a certain implicit legal regulation that supplements and extends the explicit legal regulation (in some cases, it should be treated as the establishment of a legal regulation that consolidates the behaviour opposite to the established one); thus, in certain cases, it is possible to "discover" in a reviewed legal act (in particular, in part thereof) implicit provisions regulating the respective social relationships and supplementing and extending the explicit legal regulation; still, in some other cases, the said non-establishment of an explicit legal regulation in a concrete legal act (part thereof), provided that the respective legal regulation is neither explicitly nor implicitly established in other legal acts (or in other parts of the same legal act), means that, in that legal act (part thereof), there is a legal gap that may in its turn be treated either as a legislative omission, i.e. a legal gap prohibited by the Constitution (or by some other higher-ranking legal act), or as a legal gap that may not be interpreted as a legislative omission, since the Constitution (or any other higher-ranking legal act) does not require that the respective legal regulation must be introduced, nor does it require that it must be established precisely in that legal act (precisely in that part thereof).

It has been mentioned that the non-establishment of a certain explicit legal regulation precisely in a reviewed legal act (in precisely a reviewed part thereof) may be determined by the fact that the respective legal regulation is explicitly or implicitly consolidated in another legal act (or in other parts of the same legal act). Such a legal act (part thereof) may be ruled to be in conflict with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution because of the fact that a certain legal regulation is not consolidated in precisely that legal act (part thereof) only in cases where the said higher-ranking legal act imperatively demands that the respective legal regulation be established in precisely the said reviewed legal act (in precisely the reviewed part thereof). In this context, it needs to be mentioned that the Constitution imperatively demands that certain social relationships be regulated by means of a constitutional law or a law and, sometimes, for example, in Article 93, Paragraph 2 of Article 102, and Paragraph 4 of Article 11 thereof, it even *expressis verbis* indicates the title of the law.

It was also mentioned that the non-establishment of an explicit legal regulation in a reviewed legal act (part thereof), provided that the respective legal regulation is neither explicitly nor implicitly established in other legal acts (or in other parts of the same legal act), may be treated as the establishment of a certain implicit legal regulation that supplements and extends the explicit legal regulation (in some cases, it may be treated as the establishment of a legal regulation that consolidates the behaviour opposite to the established one): although such an implicit legal regulation is not *expressis verbis* established, it is possible to derive it consistently from explicit legal norms in the course of interpreting law. For instance, in private law, in which, as is generally known, the principle of general permission is dominant, under which "everything that is not forbidden is allowed", the non-establishment of a certain explicit prohibition is, as a rule, treated as permission of certain behaviour (which is not explicitly prohibited); meanwhile, in public law, in which, as is generally accepted, the opposite principle of special permission (or general prohibition) is dominant, under which "everything that is not allowed is forbidden", the absence of a certain explicit permission should, as a rule, be interpreted as a prohibition on certain behaviour (which is not explicitly permitted). If such a legal regulation established implicitly, but not explicitly, in a lower-ranking legal act consolidates certain behaviour that is different from that established in a certain higher-ranking legal act, *inter alia* (and, first of

all), in the Constitution, this may serve as the grounds for the Constitutional Court, by its ruling, to declare (by reasonably stating the existence of the said implicit legal regulation) the said lower-ranking legal act (part thereof) to be in conflict with the said higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, insofar as the said lower-ranking legal act (part thereof) does not explicitly establish a certain legal regulation, and to remove that implicitly established legal regulation from the legal system. In this context, it should be mentioned that, in the jurisprudence of the Constitutional Court, legal acts (parts thereof) are rather often ruled to be in conflict with the Constitution insofar as those legal acts (parts thereof) do not explicitly establish a certain legal regulation.

The absence of explicit legal provisions regulating certain social relationships in a legal act (part thereof), if the respective legal regulation is neither explicitly nor implicitly established in other legal acts (or in other parts of the same legal act), should be treated as a legal gap – a *lacuna legis*. Having investigated the compliance of a legal act (part thereof) adopted by the Seimas, the President of the Republic, or the Government or the compliance of a legal act (part thereof) adopted by referendum with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution, the Constitutional Court may also hold that there is a legal gap in the respective legal act (part thereof).

The powers of the Constitutional Court to investigate the constitutionality of legal acts, including such legal acts that establish the social (material) guarantees of judges and consolidate the powers of the Constitutional Court, proceedings at the Constitutional Court, as well as the general elements and particularities of the status of the justices of the Constitutional Court (Paragraph 1 of Article 102 of the Constitution)

The Constitutional Court's ruling of 22 October 2007

… as the Constitutional Court held in its ruling of 12 July 2001, the Constitution does not provide that the Constitutional Court is permitted not to consider certain laws and other legal acts; the Constitutional Court must consider the constitutionality of all the legal acts specified in Paragraph 1 of Article 102 of the Constitution; thus, the Constitutional Court must consider the constitutionality of such legal acts whereby the social (material) guarantees of judges of the courts of the Republic of Lithuania, *inter alia,* the state pensions of judges, are established. Such powers of the Constitutional Court stem from the Constitution and are related to its constitutional duty to ensure the supremacy of the Constitution in the legal system. The Constitutional Court also has such powers in cases where an impugned legal regulation is designed to consolidate the powers of the Constitutional Court itself, proceedings at the Constitutional Court, and the general elements (which are also typical of judges of other courts) and particularities (*inter alia*, powers, guarantees) of the status of the justices of the Constitutional Court.

The powers of the Constitutional Court to investigate factual circumstances; the powers of the Constitutional Court to investigate the compliance of acts adopted by the President of the Republic with the Constitution and laws

The Constitutional Court's ruling of 20 December 2007

The Constitutional Court, when considering a constitutional justice case according to the Constitution … has the powers, if required, to investigate factual circumstances that are significant for the decision of the case (decisions of 15 December 2006 and 17 January 2007). It is also stated in the jurisprudence of the Constitutional Court that, "under the Constitution, the Constitutional Court has the powers to investigate the compliance of acts adopted by the President of the Republic with the Constitution and laws irrespective of whether these acts are of an individual or normative character, or whether they are of one-off (ad hoc) application or permanent validity", also that, "If the Constitution or laws provide for certain requirements that must be followed (that must be fulfilled) in the course of issuing an act of the President of the Republic, the Constitutional Court, when deciding whether an act adopted by the President of the Republic is in conflict with the Constitution and laws, must also investigate whether the said

requirements have been followed (fulfilled), since, if such factual circumstances were not established, it would also be impossible to investigate the compliance of the act of the President of the Republic with the Constitution", as well as that, "under the Constitution, there may not be any such a situation where the Constitutional Court may not investigate any such acts of the President of the Republic that have been issued by him/her while implementing the powers established for the President of the Republic, as the Head of State, in the Constitution and laws" (ruling of 30 December 2003 …).

The powers of the Constitutional Court to declare the unconstitutionality of such provisions of a law not impugned by a petitioner that regulate part of the relationships covered by an impugned law

The Constitutional Court's ruling of 2 March 2009

One of the essential elements of the constitutional principle of a state under the rule of law is the principle whereby a legal act that is in conflict with a higher-ranking legal act must not be applied. The Constitutional Court has held that, while administering justice, courts must invoke only those laws and legal acts that are not in conflict with the Constitution; courts must not apply a law that is in conflict with the Constitution (rulings of 13 December 2004, 16 January 2006, and 27 June 2007). Having found that the provisions of a law whose compliance with the Constitution is not impugned by a petitioner, but which regulate part of the social relationships covered by an impugned law, are in conflict with the Constitution, the Constitutional Court must state that such provisions are unconstitutional (rulings of 29 November 2001, 14 January 2002, 19 June 2002, and 27 June 2007). The implementation of constitutional justice implies that a legal act (part thereof) that conflicts with the Constitution must be removed from the legal system (ruling of 29 November 2001).

The powers of the Constitutional Court to investigate the compliance of legal acts with higher-ranking legal acts (Paragraph 1 of Article 102 of the Constitution)

The Constitutional Court's ruling of 13 May 2010

Under Paragraph 1 of Article 102 of the Constitution, the Constitutional Court has the exclusive constitutional competence to investigate and decide on whether any act adopted by the Seimas, the President of the Republic, or the Government, or whether any act (part thereof) adopted by referendum is in conflict with any higher-ranking legal act, *inter alia* (and, first of all), with the Constitution (rulings of 28 March 2006 and 6 June 2006, the decision of 8 August 2006, and the ruling of 24 October 2007). It needs to be noted that the Constitutional Court investigates, precisely, whether legal acts adopted by state institutions (Seimas, the President of the Republic, or the Government) are in conflict with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution, but it does not investigate the non-adoption of law-making decisions by the said state institutions, i.e. the avoidance of or delay in adopting such decisions, or failure to act that is determined by other motives (decision of 8 August 2006).

Assessing the constitutionality of such substatutory acts adopted by the Seimas by which the will of the Seimas regarding a future legal regulation is expressed

The Constitutional Court's ruling of 28 September 2011

… the implementation of constitutional justice determines the fact that the Constitutional Court also has the constitutional powers to investigate and decide on the constitutionality of such provisions of substatutory legal acts of the Seimas (*inter alia*, those of constituent parts of such acts) that express the will of the Seimas on a future legal regulation governing certain social relationships and are the basis for drafting and adopting the respective legal acts. The compliance of the content of such substatutory acts of the Seimas with the provisions of the Constitution and constitutional principles is among the important preconditions for the constitutionality of the legal regulation formed on the basis of such acts.

Thus, the constitutionality of the provisions of substatutory acts (*inter alia*, constituent parts thereof) of the said nature and purpose adopted by the Seimas where such provisions do not consolidate any legal

regulation (legal norms) that has (have) direct influence on legal relationships may be assessed from the aspect of the compliance of their content, on the basis of which law-making processes should take place, with the Constitution.

The powers of the Constitutional Court to investigate factual circumstances

The Constitutional Court's decision of 10 November 2011

… although the Constitutional Court, when considering a constitutional justice case under the Constitution … has the powers to investigate, if required, factual circumstances that are significant for the decision of the case (ruling of 20 December 2007 and the decisions of 15 December 2006 and 17 January 2007), in a situation where the petitioner is a court (which, when considering cases and seeking to establish the truth, must, under the Constitution and laws, be active and has broad powers and procedural instruments to establish such factual circumstances upon which the doubt over the compliance of an impugned legal act with the Constitution and/or laws is based), the Constitutional Court should investigate those factual circumstances only insofar as this is necessary to verify or specify factual circumstances established by the petitioner.

The Constitutional Court does not investigate the compliance of a substatutory legal act with such provisions of a law that are themselves in conflict with the Constitution

The Constitutional Court's ruling of 16 December 2013

The Constitutional Court has held that, while administering justice, a court must follow only such laws and other legal acts that are not in conflict with the Constitution; a court must not apply a law that is in conflict with the Constitution (rulings of 13 December 2004, 16 January 2006, 27 June 2007, 2 March 2009, and 7 September 2010). The Constitutional Court has also held that the presumption that a substatutory legal act must be in line with an unconstitutional law would be erroneous in substance; such a presumption would deny the concept (consolidated in the Constitution) of the hierarchy of legal acts, at the top of which is the Constitution; thus, such a presumption would distort the very essence of constitutional justice (rulings of 16 January 2007, 27 June 2007, 17 December 2007, 22 June 2009, 9 February 2010, and 7 September 2010).

The powers of the Constitutional Court to hold that such provisions of the Statute of the Seimas that are not impugned by the petitioner but regulate the procedure for adopting an impugned law are in conflict with the Constitution

The Constitutional Court's ruling of 24 January 2014

The Constitutional Court has held on more than one occasion that, having found that the provisions of a law whose compliance with the Constitution is not impugned by the petitioner, but which regulate part of the relationships covered by an impugned law, are in conflict with the Constitution, the Constitutional Court must state that such provisions are unconstitutional. This should be *mutatis mutandis* applied with regard to the provisions of the legal act – the Statute of the Seimas – that regulate the procedure of the adoption of an impugned law.

The powers of the Constitutional Court to investigate the compliance of a resolution of the Seimas to call a referendum or not to call a referendum with the Constitution (Paragraph 1 of Article 102 and Paragraph 1 of Article 105 of the Constitution)

The Constitutional Court's ruling of 11 July 2014

… Under Paragraph 1 of Article 102 and Paragraph 1 of Article 105 of the Constitution, a resolution of the Seimas to call a referendum or not to call a referendum may be an object of constitutional review.

The powers of the Constitutional Court to investigate the compliance of legal acts adopted by referendum with higher-ranking legal acts (Paragraph 1 of Article 102 of the Constitution)

The Constitutional Court's ruling of 11 July 2014

… in interpreting Paragraph 1 of Article 102 of the Constitution in the context of the constitutional legal regulation, the Constitutional Court has held on more than one occasion that, under the Constitution, the Constitutional Court has the exclusive competence to investigate and decide, *inter alia*, whether any act (part thereof) adopted by referendum is in conflict with any higher-ranking act, *inter alia* (and, first of all), with the Constitution (rulings of 28 March 2006, 6 June 2006, 24 October 2007, and 13 May 2010).

The powers of the Constitutional Court to state that the legal regulation impugned by the petitioner is in conflict with the Constitution from the aspect other than that indicated by the petitioner

The Constitutional Court's ruling of 22 September 2015

… after the Constitutional Court establishes that an impugned legal regulation is unconstitutional from the aspect other than that indicated by the petitioner, the Constitutional Court must state that such a legal regulation is in conflict with the Constitution from the aspect not indicated by the petitioner. The implementation of constitutional justice implies that a legal act (part thereof) that conflicts with the Constitution must be removed from the legal system (*inter alia*, the rulings of 29 November 2001 and 11 June 2015).

The powers of the Constitutional Court to declare the unconstitutionality of provisions that are not impugned by the petitioner but are consolidated in the same legal act whose other provisions are impugned by the petitioner

The Constitutional Court's ruling of 29 September 2015

The Constitutional Court has held that, if it finds that provisions whose compliance with the Constitution is not impugned by the petitioner, but which are consolidated in the same legal act whose other provisions are impugned by the petitioner in terms of their constitutionality, it must state that the said provisions that are not impugned by the petitioner are unconstitutional (rulings of 11 July 2014 and 11 June 2015). The implementation of constitutional justice implies that a legal act (part thereof) that conflicts with the Constitution must be removed from the legal system (*inter alia*, the rulings of 29 November 2001 and 22 September 2015).

The powers of the Constitutional Court to declare the unconstitutionality of provisions that are not impugned by the petitioner but are consolidated in the same law against whose other provisions the compliance of a substatutory act is impugned

The Constitutional Court's ruling of 2 March 2018

The Constitutional Court has held that, if it finds the unconstitutionality of provisions that are not impugned by the petitioner but are consolidated in the same legal act whose other provisions are impugned by the petitioner in terms of their constitutionality, it must state that the said provisions that are not impugned by the petitioner have been found to be unconstitutional (rulings of 11 July 2014, 11 June 2015, and 29 September 2015). This also applies to provisions that are not impugned by the petitioner but are laid down in the same law against whose other provisions the compliance of a substatutory act is impugned. The implementation of constitutional justice implies that a legal act (part thereof) that is in conflict with the Constitution must be removed from the legal system (*inter alia*, the rulings of 29 November 2001, 22 September 2015, and 4 July 2017).

The powers of the Constitutional Court to declare the unconstitutionality of provisions that are not impugned by the petitioner but regulate the same relationships and amend the legal regulation impugned by the petitioner

The Constitutional Court's ruling of 25 November 2019

… if the Constitutional Court finds the unconstitutionality of provisions that are not impugned by the petitioner but regulate the same relationships and amend the legal regulation impugned by the petitioner, it

must state that the said provisions that are not impugned by the petitioner have been found to be unconstitutional. The Constitutional Court has held on more than one occasion that the implementation of constitutional justice implies that a legal act (part thereof) that is in conflict with the Constitution must be removed from the legal system (*inter alia*, the rulings of 29 November 2001, 22 September 2015, and 8 November 2019).

The powers of the Constitutional Court to declare the unconstitutionality of the provisions of a substatutory legal act whose review falls within the competence of the Constitutional Court in cases where the provisions of the said substatutory legal act implement the law impugned by the petitioner

The Constitutional Court's ruling of 18 February 2020

… if the Constitutional Court finds the unconstitutionality of the provisions of a substatutory legal act whose review falls within the competence of the Constitutional Court in cases where the said substatutory legal act implements the provisions of the law impugned in the constitutional justice case at issue, it must state that the provisions of the said substatutory legal act have been found to be unconstitutional; this obligation of the Constitutional Court stems from the Constitution and, in this way, the supremacy of the Constitution is ensured.

The Constitutional Court investigates the compliance of impugned legal acts with the Constitution as an integral and harmonious system

The Constitutional Court's ruling of 3 June 2020

The Constitutional Court has held on more than one occasion that, in cases where, following a received petition, it investigates whether an impugned legal act (part thereof) is in conflict with the articles (paragraphs thereof) of the Constitution indicated in the petition, it at the same time investigates whether the impugned legal act (part thereof) is in conflict with the Constitution as a single coherent system; the Constitutional Court, having found that an impugned legal act (part thereof) is in conflict with the articles (paragraphs thereof) of the Constitution that are not indicated by the petitioner, has the powers to state this fact (*inter alia*, the rulings of 24 December 2002, 10 October 2013, and 19 September 2019). This also *mutatis mutandis* applies to cases where the Constitutional Court finds that an impugned legal act (part thereof) is in conflict with the constitutional principles not specified by the petitioner.

The powers of the Constitutional Court to declare the unconstitutionality of a legal act that is not impugned by the petitioner but for the adoption of which the preconditions were created by the legal act impugned by the petitioner

The Constitutional Court's ruling of 12 June 2020

As the Constitutional Court has held on more than one occasion, it exercises constitutional judicial review; the Constitutional Court is the institution of constitutional justice; while deciding, within its competence, on the compliance of lower-ranking legal acts (parts thereof) with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution, and exercising its other constitutional powers, the Constitutional Court – an autonomous and independent court – administers constitutional justice and guarantees constitutional lawfulness and the supremacy of the Constitution in the legal system.

It should be noted that the powers of the Constitutional Court to administer constitutional justice and to ensure constitutional lawfulness are inseparable from the imperatives of the constitutional principle of a state under the rule of law (rulings of 19 June 2018 and 16 April 2019). … it should also be noted that such constitutional powers of the Constitutional Court are inseparable from the requirement, arising from the constitutional principle of a state under the rule of law, to respect the general legal principle of *ex injuria jus non oritur* (illegal acts cannot create law).

In this context, it should be noted that, having found the unconstitutionality of a legal act that is not impugned by the petitioner but for the adoption of which the preconditions were created by the legal act

impugned by the petitioner, the Constitutional Court must state that the said legal act that is not impugned by the petitioner has been found to be unconstitutional. It should also be noted that, if the Constitutional Court did not state the unconstitutionality of a legal act that is not impugned by the petitioner but is related to the impugned legal act, this would not be in line with the constitutional mission of the Constitutional Court to administer constitutional justice and to guarantee constitutional lawfulness and the supremacy of the Constitution in the legal system.

… the implementation of constitutional justice implies that a legal act (part thereof) that is in conflict with the Constitution must be removed from the legal system. Therefore, under the Constitution, the Constitutional Court must remove from the legal system all anti-constitutional provisions whose unconstitutionality becomes apparent in the respective constitutional justice case under consideration.

The Constitutional Court has the powers to hold that a legal act impugned by the petitioner is in conflict with a higher-ranking legal act that is not indicated by the petitioner and is other than the Constitution

The Constitutional Court's ruling of 30 July 2020

The Constitutional Court has held that, having found that an impugned legal act (part thereof) is in conflict with the articles (paragraphs thereof) of the Constitution that are not indicated by the petitioner, the Constitutional Court has the powers to state this fact (*inter alia*, the rulings of 13 June 2000, 24 December 2002, and 30 December 2015). It should be noted that this provision is also *mutatis mutandis* applicable in cases where the Constitutional Court finds that an impugned legal act (part thereof) is in conflict with a higher-ranking legal act that is not indicated by the petitioner and is other than the Constitution, *inter alia*, that an impugned law is in conflict with a constitutional law.

Laws amending the Constitution (amendments to the Constitution) are subject to constitutional review by the Constitutional Court

The Constitutional Court's ruling of 30 July 2020

… laws amending the Constitution (amendments to the Constitution), although they have the force of the Constitution, are subject to constitutional review.

… under the Constitution, the Constitutional Court has the exclusive competence to investigate and decide whether, *inter alia*, any act adopted by the Seimas, as well as any act (part thereof) adopted by referendum, is in conflict, *inter alia* (and, first of all), with the Constitution (*inter alia*, the rulings of 28 March 2006, 24 October 2007, and 13 May 2010). Thus, under the Constitution, the Constitutional Court has the exclusive competence to decide whether laws amending the Constitution (amendments to the Constitution) are in line with the substantive and procedural limitations on the alteration of the Constitution, which arise from the Constitution. A different interpretation of the Constitution would render meaningless the substantive and procedural limitations on the alteration of the Constitution, which arise from the Constitution; it would, therefore, create no preconditions for defending the universal values on which the Constitution, as supreme law and as a social contract, and the state, as the common good of all society, are based; it would create no preconditions for protecting these values and the harmony of the provisions of the Constitution and, at the same time, would create no preconditions for ensuring the supremacy of the Constitution.

8.3.2. The powers of the Constitutional Court to present conclusions

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

See 4. The state and its institutions, 4.4. The responsibility of the authorities to society. The constitutional responsibility of the highest-ranking state officials, the conclusion of 31 March 2004.

The competence of the Constitutional Court to present a conclusion on violations of election laws (Paragraph 2 of Article 102 and Item 1 of Paragraph 3 of Article 105 of the Constitution)

The Constitutional Court's conclusion of 5 November 2004

Item 1 of Paragraph 3 of Article 105 of the Constitution prescribes that the Constitutional Court presents a conclusion on whether there were the violations of election laws during the elections of the President of the Republic or the elections of the members of the Seimas.

Paragraph 2 of Article 102 of the Constitution states that the status of the Constitutional Court and the procedure for the execution of its powers are established by the Law on the Constitutional Court of the Republic of Lithuania.

Under … the Law on the Constitutional Court, while investigating an inquiry on the violation of election laws during an election of the President of the Republic or the members of the Seimas, the Constitutional Court examines and assesses only the decisions adopted by the Central Electoral Commission or its refusals to examine complaints concerning the violation of election laws in cases where such decisions are adopted or other acts are carried out by the said commission after voting closes in the election of the members of the Seimas or the President of the Republic.

The conclusion of the Constitutional Court that there was a gross violation of the election law during an election of the Seimas (Item 6 of Article 63 and Item 1 of Paragraph 3 of Article 105 of the Constitution)

See 5. The Seimas, 5.3. The constitutional status of a member of the Seimas, the conclusion of 10 November 2012 ("The termination of the powers of a member of the Seimas where the election is declared invalid or the law on election is grossly violated (Item 6 of Article 63 of the Constitution)").

A conclusion presented by the Constitutional Court whether there was a violation of the election law during an election of the Seimas (Item 1 of Paragraph 3 of Article 105 of the Constitution)

The Constitutional Court's ruling of 27 May 2014

Paragraph 3 of Article 107 of the Constitution stipulates that, on the basis of the conclusions of the Constitutional Court, the Seimas takes a final decision on the issues specified in Paragraph 3 of Article 105 of the Constitution. Under Item 1 of Paragraph 3 of Article 105 of the Constitution, the Constitutional Court presents a conclusion on whether there were the violations of the election law during the elections of the members of the Seimas. As held by the Constitutional Court in its decision of 29 November 2012, the Seimas, after receiving the conclusion of the Constitutional Court that the election law was violated during the election of the members of the Seimas, is obliged to adopt a final decision.

[…]

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

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

President, the Constitutional Court gives the conclusion that the election law was violated during the election of the members of the Seimas.

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

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

8.3.3. The powers of the Constitutional Court to officially interpret the Constitution; the continuity of the jurisprudence of the Constitutional Court; and the development and reinterpretation (modification) of the official constitutional doctrine

The continuity of the jurisprudence of the Constitutional Court

The Constitutional Court's ruling of 13 December 2004

One of the numerous aspects of the constitutional principle of state under the rule of law … is that similar cases must be decided in a similar manner. Therefore, the discretion of jurisdictional institutions, when resolving disputes and applying law, is limited. In its rulings of 21 July 2001 and 30 May 2003, as well as in its decision of 13 February 2004, the Constitutional Court held that the principle of a state under the rule of law, which is enshrined in the Constitution, implies, *inter alia*, the continuity of jurisprudence. The Constitutional Court, while deciding analogous constitutional disputes, follows the doctrine that was formed in its previous cases and reveals the content of the Constitution.

The interpretation of the Constitution in the jurisprudence of the Constitutional Court; the continuity of the jurisprudence of the Constitutional Court

The Constitutional Court's ruling of 14 March 2006

The principle of a state under the rule of law, which is enshrined in the Constitution, implies the continuity of the jurisprudence (rulings of 12 July 2001 and 30 May 2003, the decision of 13 February 2004, and the ruling of 13 December 2004). This can also be said as regards the jurisprudence of the Constitutional Court in which the official constitutional doctrine is formulated, the constitutional principles and norms are interpreted, and interrelations among various constitutional provisions, the relation of their content, the balance of constitutional values, and the essence of the constitutional legal regulation as a single whole are revealed. In the course of investigating the compliance of legal acts with higher-ranking legal acts, the Constitutional Court develops the concept of the provisions of the Constitution as presented in its previous acts and reveals new aspects of a particular legal regulation established in the Constitution, where such aspects are necessary for the consideration of a concrete constitutional justice case (rulings of 30 May 2003, 1 July 2004, and 13 December 2004).

Reinterpreting (modifying) the official constitutional doctrine upon amendments to the Constitution

The Constitutional Court's ruling of 14 March 2006

The continuity of the constitutional jurisprudence does not mean that the constitutional doctrine may not be modified or that its provisions may not be reinterpreted.

… it is (or may be) necessary to reinterpret official provisions of the constitutional doctrine (to modify the official constitutional doctrine), *inter alia*, in cases where amendments are made to certain articles (parts thereof) of the Constitution. On the entry into force of a constitutional amendment that alters (or repeals) a certain provision of the Constitution on the basis of which (i.e. in the course of the interpretation of which) the previous constitutional doctrine was formulated (on the respective issue of the constitutional legal regulation), the Constitutional Court, under the Constitution, has the exceptional powers to state whether, while interpreting the Constitution, it is still possible (and to what extent) to invoke the official constitutional doctrine formulated by the Constitutional Court on the basis of the previous provisions of the Constitution, or whether it is no longer possible to invoke it (and to what extent) (rulings of 13 May 2004, 16 January 2006, and 24 January 2006).

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 such 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 and the balance of values consolidated in the Constitution would, thus, be disturbed. Taking account of this, it should be held that the reinterpretation of official constitutional doctrinal statements (modification of the official constitutional doctrine) may also be necessary when such an amendment to the Constitution is made (certain provision of the Constitution is amended or repealed or a new provision is laid down in the Constitution) whereby the content of the entire constitutional legal regulation is modified in substance, even though the provision of the Constitution on the basis of which (i.e. while interpreting it) the previous official constitutional doctrine on a certain issue of the constitutional legal regulation was formulated is not formally changed. In such cases, it is solely the Constitutional Court that has the exceptional powers to state whether, while interpreting the Constitution, it is still possible (and to what extent) to invoke the previous official constitutional doctrine (as a whole and on every individual issue of the constitutional legal regulation) or whether it is no longer possible to invoke it (and to what extent).

[…]

On the other hand, the continuity of the constitutional jurisprudence and of the constitutional doctrine formulated therein, as well as the exceptional constitutional powers of the Constitutional Court to hold whether, in the course of interpreting the Constitution, it is still possible to invoke (and to what extent) the previous official constitutional doctrine or whether it is no longer possible to invoke it (and to what extent), implies that, each time when it is necessary to reinterpret certain official constitutional doctrinal provisions (to modify the official constitutional doctrine), the Constitutional Court must explicitly point it out and must properly (clearly and rationally) argue this in its respective act.

The powers of the Constitutional Court to officially interpret the Constitution; the force of the official constitutional doctrine

The Constitutional Court's ruling of 28 March 2006

Under the Constitution, only the Constitutional Court has the powers to interpret the Constitution officially (rulings of 30 May 2003, 29 October 2003, 13 May 2004, 1 July 2004, and 13 December 2004 and the decision of 20 September 2005). It is the Constitutional Court that formulates the official constitutional doctrine: the provisions of the Constitution – its norms and principles – are interpreted in the acts of the Constitutional Court. The official constitutional doctrine, *inter alia*, reveals the content of various constitutional provisions, their interrelations, the balance between constitutional values, and the essence of

the constitutional legal regulation as a single whole (rulings of 1 July 2004, 13 December 2004, and 14 March 2006). The official constitutional doctrine may also *expressis verbis* specify what interpretation of the Constitution is not permissible.

Every ruling of the Constitutional Court is integral (it constitutes a single whole) and all its constituent parts are interrelated (decision of 12 January 2000, the ruling of 30 May 2003, the decisions of 11 February 2004 and 13 February 2004, the ruling of 19 January 2005, and the decisions of 10 February 2005 and 20 September 2005). The operative part of a ruling of the Constitutional Court is based on the arguments of the reasoning part (decisions of 12 January 2004, 11 February 2004, 13 February 2004, 10 February 2005, and 20 September 2005). When passing new laws and amending or supplementing laws or other legal acts that have already been passed, the state institutions that pass such acts are bound both by the concept of the provisions of the Constitution and by other legal arguments that are presented in the reasoning of the respective ruling of the Constitutional Court (rulings of 30 May 2003 and 19 January 2005 and the decision of 20 September 2005). It also needs to be noted that law-making institutions (officials) and law-applying institutions (officials) are bound by the concept of constitutional provisions and by arguments set out not only in the rulings of the Constitutional Court, but also in other acts of the Constitutional Court, i.e. its conclusions and decisions; thus, under the Constitution, the content of all acts of the Constitutional Court in which the Constitution is interpreted, i.e. the official constitutional doctrine is formed, is also binding on law-making institutions (officials) and law-applying institutions (officials), including courts of general jurisdiction and specialised courts (decision of 20 September 2005).

Law-making subjects elucidate (often also interpret) higher law, thus, also the Constitution; law-applying subjects, *inter alia*, those that apply the Constitution, cannot avoid the elucidation (often also the interpretation) of higher law. The application of the Constitution is inseparable from the elucidation and, often, interpretation of its provisions. It is elucidation and interpretation of the provisions of the Constitution that are the necessary precondition for instituting the verification of the compliance of certain legal acts (parts thereof) with the Constitution at the Constitutional Court or another court to whose jurisdiction this is assigned. In this context, it should be emphasised that, as the Constitutional Court held in its decision of 20 September 2005, all law-making subjects and all law-applying subjects, including courts, must pay regard to the official constitutional doctrine when they apply the Constitution; they may not interpret the provisions of the Constitution differently from how the Constitutional Court has interpreted the said provisions in its acts. Otherwise, the constitutional principle that only the Constitutional Court has the powers to officially interpret the Constitution would be violated, the supremacy of the Constitution would be disregarded, and the preconditions would be created for the emergence of incompatibilities in the legal system.

It should be noted that courts, which, under the Constitution and laws, have the powers to investigate, in terms of compliance with the Constitution (other higher-ranking legal acts), such legal acts (parts thereof) whose investigation in terms of their compliance with the Constitution (other higher-ranking legal acts) does not fall within the jurisdiction of the Constitutional Court and to adopt the respective decisions, must not avoid the interpretation of the Constitution in cases where they investigate the compliance of the said legal acts (parts thereof) with the Constitution. … under … laws, administrative courts, i.e. specialised courts, which are established under Paragraph 2 of Article 111 of the Constitution, decide on the compliance of legal acts (parts thereof) passed by other law-making subjects (thus, not those passed by the Seimas, the President of the Republic, or the Government and not those adopted by referendum), *inter alia*, on the compliance of legal acts passed by ministers, other lower-ranking substatutory legal acts, as well as legal acts passed by municipalities, with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution. In its decision of 20 September 2005, the Constitutional Court held that, while implementing their respective powers, administrative courts are bound by the official constitutional doctrine formulated in acts (rulings, conclusions, and decisions) adopted by the Constitutional Court.

The development and reinterpretation (modification) of the official constitutional doctrine

The Constitutional Court's ruling of 28 March 2006

When investigating the compliance of laws and other legal acts with the Constitution, the Constitutional Court develops the concept of the provisions of the Constitution as presented in its previous rulings and other acts and reveals new aspects of a particular legal regulation established in the Constitution, where such aspects are necessary for the consideration of a concrete constitutional justice case (rulings of 30 May 2003, 1 July 2004, 13 December 2004, and 14 March 2006).

The development of the constitutional jurisprudence and the official doctrine formulated therein (particularly at the beginning of the activity of the Constitutional Court, when no official constitutional doctrine was yet formulated on most constitutional provisions) is characterised by the fact that the official constitutional doctrine is not formulated all "at once" on any issue of the constitutional legal regulation (or on any issue of the interpretation of the respective provisions of the Constitution), but "case by case", by supplementing the elements (fragments) of the said doctrine that were disclosed in the acts of the Constitutional Court adopted in previous constitutional justice cases with other elements revealed in the acts of the Constitutional Court adopted in new constitutional justice cases.

Thus, it should be emphasised that the formulation of the official constitutional doctrine (both as a whole and on every individual issue of the constitutional legal regulation) is not a one-off act, but a gradual and coherent process. This process is uninterrupted and is never fully completed, since the nature of the Constitution itself as the highest-ranking act and the idea of constitutionalism imply that the Constitution cannot and does not contain any gaps or internal contradictions (rulings of 25 May 2004 and 13 December 2004); while interpreting the norms and principles of the Constitution, which are consolidated explicitly or implicitly in the text of the Constitution and constitute a harmonious system, there is always the possibility, if this is necessary due to the logic of a constitutional justice case under consideration, that the Constitutional Court will formulate such provisions of the official constitutional doctrine, i.e. reveal such aspects of the constitutional regal regulation, that have not been formulated yet in the acts of the Constitutional Court adopted in previous constitutional justice cases. Whenever the Constitutional Court considers new constitutional justice cases subsequent to petitions, the official constitutional doctrine formulated in the previous acts of the Constitutional Court (on each individual issue of the constitutional legal regulation that is important for a particular case) is every time supplemented with new fragments. Thus, by formulating new official constitutional doctrinal provisions, the diversity and completeness of the legal regulation laid down in the Constitution – the supreme legal act – is revealed.

In this ruling of the Constitutional Court, it has been held that the official constitutional doctrine (both as a whole and on every individual issue of the constitutional legal regulation) is formulated gradually and coherently, by supplementing the elements (fragments) of the said doctrine revealed in previous acts adopted by the Constitutional Court with other elements revealed in new acts of the Constitutional Court.

Therefore, in general, it is not impossible that at a given time in the jurisprudence of the Constitutional Court (in particular, at the beginning of the activity of the Constitutional Court), there would also be such official constitutional doctrinal provisions (fragments or rudiments of the doctrine) that, if compared with each other but assessed separately from the entire official constitutional doctrinal context (in particular, where a more detailed and broader official constitutional doctrine is not formed on a particular issue of the constitutional legal regulation) and/or general principles of law, can be regarded as competing ones. If the text of the Constitution does not change, if it remains stable (i.e. if no respective amendments to the Constitution are made), the said real or alleged competition of these official constitutional doctrinal provisions is removed by further (*inter alia*, systemic) interpretation and development (in new constitutional justice cases) of the concept of the provisions of the Constitution and the official constitutional doctrinal provisions already formulated on the basis of the provisions of the Constitution.

The concept of the provisions of the Constitution and further interpretation and development of the official constitutional doctrinal provisions formulated on the basis of the said provisions of the Constitution

in the acts of the Constitutional Court adopted in new constitutional justice cases may, under certain circumstances, imply not only disclosing new aspects of the constitutional legal regulation where such aspects are necessary for the investigation of the said constitutional justice cases and supplementing the concept of the provisions of the Constitution with new elements (fragments) where such concept was presented in the acts of the Constitutional Court adopted in previous constitutional justice cases, but also reinterpreting the previously formulated official constitutional doctrinal provisions when the official constitutional doctrine is modified.

It should be noted that the constitutional principle that only the Constitutional Court has the powers to interpret the Constitution officially and the related requirement that, while applying the Constitution, all law-making subjects and law-applying subjects (including courts) must pay regard to the official constitutional doctrine and must not interpret the provisions of the Constitution differently from how the Constitutional Court interpreted the said provisions in its acts imply that the said reinterpretation of the concept of the provisions of the Constitution and official constitutional doctrinal provisions when the official constitutional doctrine is modified is the exclusive competence of the Constitutional Court.

The continuity of the jurisprudence of the Constitutional Court

The Constitutional Court's ruling of 28 March 2006

It should be emphasised that where no such amendments to the Constitution are made due to which it is necessary to reinterpret certain official constitutional doctrinal provisions so that the official constitutional doctrine would be modified, it is allowed to reinterpret official doctrinal provisions only if the necessity arises from the Constitution to diverge from the existing precedent and to create a new one. In this field, the Constitutional Court is not completely free – it is bound both by the precedents that it itself has created and by the official constitutional doctrine that it itself has formulated and that substantiates such precedents.

… the principle of a state under the rule of law, which is enshrined in the Constitution, implies the continuity of jurisprudence … the creation of new court precedents, and arguing (reasoning) the court precedents must not be volitional acts that are rationally and legally unreasoned. Since courts of general jurisdiction, *inter alia*, the Supreme Court of Lithuania and the Court of Appeal of Lithuania, must, within their competence, ensure the continuity of the respective jurisprudence (*inter alia*, ensure that the practice of courts of general jurisdiction would be modified (that such practice would be deviated from precedents that were binding on courts by then and new precedents would be created) only when this is unavoidably and objectively necessary, as well as constitutionally justifiable and reasoned, and that such modification of the practice of courts of general jurisdiction (deviation from previous precedents that were binding on courts by then and the creation of new precedents) would in all cases be properly (clearly and rationally) argued (first of all, in the decisions of courts of general jurisdiction themselves)), and since the courts of the highest instances of the systems of specialised courts established under Paragraph 2 of Article 111 of the Constitution (in the system of administrative courts – the Supreme Administrative Court) are under the same obligation, therefore, the Constitutional Court, while invoking the constitutional doctrine that it itself has formed and precedents that it itself has created, must in the same way ensure the continuity of the constitutional jurisprudence (its coherence and consistency) and the predictability of its decisions.

Thus, deviating from the precedents created by the Constitutional Court when adopting decisions in constitutional justice cases is allowed and new precedents may be created only in cases where this is unavoidably and objectively necessary and is constitutionally justifiable and reasoned. Also, the official constitutional doctrinal provisions on which the precedents of the Constitutional Court are based must not be reinterpreted in a manner that the official constitutional doctrine may be modified when this is not unavoidably and objectively necessary, as well as constitutionally justifiable and reasoned. Any change of the precedents of the Constitutional Court or modification of the official constitutional doctrine may not be determined by accidental (from the aspect of law) factors. For instance, the modification of the official constitutional doctrine may not be determined solely by a change in the composition of the Constitutional Court.

It should be emphasised that the said necessity to reinterpret certain official constitutional doctrinal provisions so that the official constitutional doctrine would be modified may be determined only by such circumstances as the necessity to increase the possibilities of implementing the innate and acquired rights of persons and their legitimate interests, the necessity to better defend and protect the values enshrined in the Constitution, the need to create better conditions in order to reach the aims of the Lithuanian Nation that are declared in the Constitution and on which the Constitution itself is based, as well as the necessity to expand the possibilities of constitutional control in this country in order to guarantee constitutional justice and to ensure that no legal act (part thereof) that is in conflict with higher-ranking legal acts would have the immunity from being removed from the legal system.

It also needs to be emphasised that it is impossible and constitutionally impermissible to reinterpret the official constitutional doctrine so that the official constitutional doctrine would be modified in such a manner that the system of values consolidated in the Constitution is changed, their compatibility is denied, the guarantees for the protection of the supremacy of the Constitution in the legal system are reduced, the concept of the Constitution as a single act and harmonious system is denied, the constitutional guarantees of the rights and freedoms of persons are reduced, and the model of the separation of powers, which is enshrined in the Constitution, is changed.

It should be particularly emphasised that every case of such reinterpretation of the official constitutional doctrine when the official constitutional doctrine is modified must be argued properly (clearly and rationally) in the respective act of the Constitutional Court.

The development and reinterpretation (modification) of the official constitutional doctrine allows ensuring the viability of the Constitution

The Constitutional Court's ruling of 28 March 2006

… the further interpretation and development of the official constitutional doctrine, *inter alia*, the reinterpretation of the official constitutional doctrinal provisions, also such reinterpretation where the official constitutional doctrine is modified, makes it possible, in the acts of the Constitutional Court adopted in new constitutional justice cases, to reveal the deep potential of the Constitution without changing its text and, in this respect, to adjust the Constitution to the changes of social life and to the constantly changing living conditions of society and the state, as well as to ensure the viability of the Constitution as the legal foundation of the life of society and the state. The formation and development of the official constitutional doctrine is a function of constitutional justice. The acts of the Constitutional Court adopted in new constitutional justice cases where such acts further interpret and develop, *inter alia*, reinterpret, the official constitutional doctrinal provisions, also where reinterpretation is made in a manner modifying the official constitutional doctrine, make it possible not to make any intervention into the text of the Constitution when such intervention is not legally necessary. In this way, the said acts adopted by the Constitutional Court contribute to ensuring the stability of the text of the Constitution and the constitutional order.

The reinterpretation of the official constitutional doctrinal provisions, also such reinterpretation where the constitutional doctrine is modified, means, *inter alia,* that, in the future, at the Constitutional Court, constitutional justice cases will have to be considered and decisions will have to be adopted by following this reinterpreted (modified) official constitutional doctrine.

The development of the official constitutional doctrine does not constitute grounds for reviewing the final acts of the Constitutional Court adopted in previous cases

The Constitutional Court's ruling of 28 March 2006

… under the Constitution, no development of the official constitutional doctrine – neither the supplementing of the conception of the provisions of the Constitution provided in the acts of the Constitutional Court adopted in previous constitutional justice cases with new elements (fragments) nor the reinterpretation of the previously formulated official constitutional doctrinal provisions where the official constitutional doctrine is modified – may constitute or constitutes grounds for reviewing the previously

adopted rulings, conclusions, or decisions (or their reasoning) by which constitutional justice cases were completed.

The same can also be said about such cases where the Constitutional Court, after it receives a petition of a court of general jurisdiction or a specialised court (established under Paragraph 2 of Article 111 of the Constitution) requesting an investigation into and a decision on whether a certain act (part thereof) passed by the Seimas, the President of the Republic, or the Government or that adopted by referendum is in conflict with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, does not decide, under the Constitution and the Law on the Constitutional Court, on the merits of a question by means of a properly (clearly and rationally) argued decision, i.e. the Constitutional Court refuses to consider the petition, or dismisses the instituted legal proceedings (case) where, after the respective petition was received at the Constitutional Court, the preparation of a constitutional justice case for a hearing at the Constitutional Court has begun or it has already been considered in a hearing at the Constitutional Court.

[…]

… neither any development of the official constitutional doctrine nor the application of new methods of the interpretation of law while interpreting certain provisions of the Constitution constitutes or may constitute grounds for the Constitutional Court to review its final legal acts – rulings, conclusions, and decisions, *inter alia*, such by means of which the Constitutional Court refuses to consider a petition of the petitioner – a court – requesting an investigation into and a decision on whether a legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government or that adopted by referendum is in conflict with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, or by which the instituted legal proceedings (case) are (is) dismissed where, after the respective petition was received at the Constitutional Court, the preparation of a constitutional justice case for a hearing at the Constitutional Court has begun or it has already been considered in a hearing at the Constitutional Court.

… Paragraph 1 of Article 107 of the Constitution means that every legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government or that adopted by referendum where such a legal act has been declared in conflict with any higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, is removed from the Lithuanian legal system for good and may never be applied.

… [the] provisions [of Paragraphs 1 and 2 of Article 107] of the Constitution help to ensure the stability and certainty of the legal regulation of social relationships, the continuity of the jurisprudence of the Constitutional Court (and other courts), and the predictability of their activity and adopted decisions, while the subjects of constitutional legal relationships are protected from such a review of final legal acts adopted by the Constitutional Court that would be determined not by the objective constitutional necessity, but by accidental (from the legal point of view) factors.

The development of the official constitutional doctrine does not constitute grounds for addressing the Constitutional Court repeatedly with the same petition or inquiry

The Constitutional Court's ruling of 28 March 2006

… as such, no development of the official constitutional doctrine (*inter alia*, such reinterpretation of the official constitutional doctrinal provisions where the official constitutional doctrine is modified) constitutes grounds for the subjects specified in Article 106 of the Constitution to apply to the Constitutional Court with a new petition requesting an investigation into whether such a law (part thereof) is in conflict with the Constitution (another higher-ranking legal act) whose compliance with the Constitution (another higher-ranking legal act) has already been investigated on the merits, or with a petition that is analogous to a petition previously filed by a certain subject requesting an investigation into whether such a legal act (part thereof) is in conflict with the Constitution (another higher-ranking legal act) on which the Constitutional Court has already passed the decision to refuse to consider such a petition or passed the decision (ruling) to dismiss the instituted legal proceedings (case) (if, after the respective petition was received at the Constitutional Court, the preparation of the constitutional justice case for the hearing of the Constitutional Court began, or if the

respective petition has already been considered at the hearing of the Constitutional Court), thus, where the Constitutional Court did not decide the respective question on the merits.

As such, the change (reinterpretation, modification) of the constitutional doctrine formed by the Constitutional Court previously does not constitute grounds for the subjects specified in Article 106 of the Constitution to apply to the Constitutional Court with a new inquiry whether there were the violations of election laws during the elections of the President of the Republic or the elections of the members of the Seimas, whether the state of health of the President of the Republic allows him/her to continue to hold office, whether the international treaties of the Republic of Lithuania are in conflict with the Constitution, and whether the concrete actions of the members of the Seimas and state officials against whom an impeachment case has been instituted are in conflict with the Constitution.

Interpreting the Constitution and other legal acts in the jurisprudence of the Constitutional Court

The Constitutional Court's decision of 8 May 2007

When investigating whether an impugned law (part thereof) is in conflict with the Constitution, the Constitutional Court officially interprets both the Constitution and the said law. In doing so, the Constitutional Court applies various methods of the interpretation of law: systemic, the one of general legal principles, logical, teleological, the one of the intentions of the legislature, the one of precedents, historical, comparative, etc.

As such, a judgment handed down by the European Court of Human Rights does not constitute constitutional grounds for reinterpreting (modifying) the official constitutional doctrine

The Constitutional Court's ruling of 5 September 2012

… as such, a judgment of the European Court of Human Rights may not serve as constitutional grounds for the reinterpretation (modification) of the official constitutional doctrine (provisions thereof) if such reinterpretation, in the absence of the respective amendments to the Constitution, changed the overall constitutional regulation (*inter alia*, the integrity of the constitutional institutions …) in substance, also if it disturbed the system of the values consolidated in the Constitution and diminished the guarantees for the protection of the supremacy of the Constitution in the legal system.

The powers of the Constitutional Court to interpret the Constitution

The Constitutional Court's ruling of 5 September 2012

The powers of the Constitutional Court to officially interpret the Constitution and to provide, in its jurisprudence, the official concept of the provisions of the Constitution arise from the Constitution itself: in order to be able to establish and adopt a decision whether the legal acts (parts thereof) under investigation are in conflict with higher-ranking legal acts, the Constitutional Court has the constitutional powers to officially interpret both the legal acts under investigation and the said higher-ranking legal acts; a different interpretation of the powers of the Constitutional Court would deny the constitutional mission of the Constitutional Court itself (ruling of 6 June 2006 and the decision of 3 May 2010).

8.3.4. The limits of the jurisdiction of the Constitutional Court

8.3.4.1. The powers of the Constitutional Court to investigate the constitutionality of legal gaps

The powers of the Constitutional Court to investigate the constitutionality of legal gaps

The Constitutional Court's decision of 6 May 2003

If laws (parts thereof) fail to establish a certain legal regulation, the Constitutional Court has the constitutional powers to investigate the constitutionality of such laws (parts thereof) in cases where failure

to lay down the said legal regulation in precisely the aforementioned laws (parts thereof) may lead to a violation of the principles and/or norms of the Constitution.

The Constitutional Court also has the constitutional powers to investigate the compliance of such substatutory acts (parts thereof) passed by the Seimas, the Government, or the President of the Republic in which a certain legal regulation is not established with the Constitution and/or laws in cases where failure to lay down the said legal regulation in precisely the aforementioned substatutory legal acts (parts thereof) may lead to a violation of the Constitution and/or laws.

In cases where a petitioner impugns the fact that a law or another legal act (part thereof) indicated by the petitioner does not establish a certain legal regulation, but the said legal regulation, under the Constitution (or also under laws, where a substatutory legal act passed by the Seimas, the Government, or the President of the Republic is impugned), does not need to be established in the aforesaid impugned legal act (part thereof), the Constitutional Court holds that, in the case on the request of the petitioner, the matter for investigation is absent; this constitutes grounds for dismissing the case (ruling of 25 January 2001).

A legal gap *(lacuna legis)*, *inter alia*, a legislative omission

See 1. The foundations of the constitutional order, 1.8. The foundations of lawmaking and of the application of law, 1.8.3. Legal gaps, the decision of 8 August 2006.

The powers of the Constitutional Court to declare a legal regulation that contains a legal omission to be in conflict with the Constitution (another higher-ranking legal act); the Constitutional Court does not have the powers to assess the inaction of law-making subjects (non-adoption of law-making decisions) (Paragraphs 1 and 2 of Article 105 and Paragraph 1 of Article 107 of the Constitution)

The Constitutional Court's decision of 8 August 2006

The "detection" of a legislative omission *par excellence* in a lower-ranking legal act (part thereof), if this is necessary because of the logic of the constitutional justice case under consideration, constitutes sufficient grounds for ruling the aforesaid legal act (part thereof) to be in conflict (to the respective extent, i.e. to the extent that the legal act (part thereof) does not consolidate the legal regulation required by higher-ranking legal acts, *inter alia* (and, first of all), by the Constitution) with the Constitution (another higher-ranking legal act).

[…]

In the acts adopted by the Constitutional Court (*inter alia*, the decision of 16 April 2004 and the rulings of 29 December 2004, 19 January 2005, 16 January 2006, and 28 March 2006), various aspects of a legislative omission, as a phenomenon of legal reality, have been revealed.

In its jurisprudence (*inter alia*, in the ruling of 25 January 2001, the decisions of 6 May 2003, 13 May 2003, and 16 April 2004, and the ruling of 13 December 2004), the Constitutional Court follows the provision that the Constitutional Court has the constitutional powers not only to hold that there is a legal gap, *inter alia*, a legislative omission, in a reviewed lower-ranking legal act (part thereof), but also, by its ruling adopted in the constitutional justice case, it can rule such a legal regulation to be in conflict with higher-ranking legal acts, *inter alia*, with the Constitution. However, in order that the Constitutional Court could accept for consideration a petition impugning a real or alleged legal gap, *inter alia*, a legislative omission, let alone that the Constitutional Court would be able, by its ruling, to rule the respective legal regulation to be in conflict with higher-ranking legal acts, *inter alia*, with the Constitution, it is necessary to follow certain conditions, which are defined in the jurisprudence of the Constitutional Court (*inter alia*, in the aforementioned rulings and decisions of the Constitutional Court), namely: if laws or other lower-ranking legal acts (parts thereof) do not establish a certain legal regulation, the Constitutional Court has the constitutional powers to rule such laws or other legal acts (parts thereof) to be in conflict with the Constitution or other higher-ranking legal acts in cases where failure to lay down the said legal regulation in precisely the reviewed laws or other legal acts (in precisely the reviewed parts thereof) may lead to a violation of the principles and/or norms of the Constitution or the provisions of other higher-ranking legal acts;

however, in cases where the Constitutional Court reviews a law or another legal act (part thereof), impugned by a petitioner, that does not establish a certain legal regulation that, under the Constitution (and also under laws, if a substatutory act (part thereof) passed by the Seimas, or an act (part thereof) passed by the President of the Republic or the Government is impugned), does not need to be established in precisely the impugned legal act (in precisely that part thereof), the Constitutional Court holds that the matter for investigation is absent in the case on the request of the petitioner and this constitutes grounds for dismissing the instituted legal proceedings (if the respective petition was accepted at the Constitutional Court and the preparation of a constitutional justice case for the hearing of the Constitutional Court has begun) or for dismissing the case (if the constitutional justice case has already been considered at the hearing of the Constitutional Court).

Attention should be paid to the fact that, while deciding whether the Constitutional Court has, under the Constitution, the powers to rule a legal gap in a lower-ranking legal act (or other absence of explicit legal provisions in that legal act) to be in conflict with the Constitution or another higher-ranking legal act, it is impossible to focus solely on the doctrinal provision (statement) "If laws (parts thereof) fail to establish a certain legal regulation, the Constitutional Court has the constitutional powers to investigate the constitutionality of such laws (parts thereof) in cases where failure to lay down the said legal regulation in precisely the aforementioned laws (parts thereof) may lead to a violation of the principles and/or norms of the Constitution" of the Constitutional Court's decision of 6 May 2003. It is also necessary to take account of how the said legal gap occurred: whether it is a legislative omission created by means of a law-making action of the subject that passed the particular legal act (i.e. due to the fact that, in the course of passing this legal act, the legal relationships that must be regulated in precisely that legal act (in precisely that part thereof) were not regulated in precisely that legal act (in precisely that part thereof)), or whether this legal gap occurred due to other circumstances, for example, due to the fact that, by its ruling, the Constitutional Court recognised that the legal regulation in a certain lower-ranking legal act (part thereof) was in conflict with the Constitution or another higher-ranking legal act. In the latter case, as mentioned before, there are no grounds for stating the presence of a legislative omission; on the contrary, in such a situation, under the Constitution, the respective law-making subject (provided that the particular legal relationships must be legally regulated) is under the obligation to change the legal regulation that is no longer valid so that a newly established legal regulation would not be in conflict with a certain higher-ranking legal act, *inter alia* (and, first of all), with the Constitution.

A different concept of a legislative omission, as well as a different interpretation of the powers of the Constitutional Court to investigate the compliance of lower-ranking legal acts with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution, and to recognise, by its rulings, that the legal gaps present in those lower-ranking legal acts (parts thereof) are in conflict with higher-ranking legal acts, *inter alia*, with the Constitution, namely the interpretation that the Constitutional Court may or must also investigate such legal gaps that are not the consequence of an action of the law-making subject that passed a certain legal act, for example, such legal gaps where the regulation of certain legal relationships has never started in any legal acts, although there is a need for their legal regulation, as well as such legal gaps or other indeterminacies that could occur after the Constitutional Court recognises, by its ruling, that a certain legal act (part thereof) is in conflict with a higher-ranking legal act, *inter alia*, with the Constitution, would deny the essence of a legislative omission as the consequence of the action of the law-making subject that passed the respective legal act. In addition, the presumption that the Constitutional Court may or must investigate also such legal gaps or other indeterminacies that occur after the Constitutional Court itself recognises, by its ruling, that a certain legal act (part thereof) is in conflict with a higher-ranking legal act, *inter alia*, with the Constitution, would mean that the Constitutional Court, while acting within its constitutional competence, by the said ruling, creates such a legal situation (i.e. that it virtually creates a new legal regulation instead of that ruled in conflict with a higher-ranking legal act, *inter alia*, with the Constitution) that is incompatible with the Constitution or another higher-ranking legal act; such interpretation of the powers of the Constitutional Court to recognise, by its ruling, that legal gaps are in conflict with the Constitution would distort in substance and even deny the essence and meaning of constitutional review and constitutional justice.

The aforesaid presumption would also ignore the fact that, under Paragraphs 1 and 2 of Article 105 of the Constitution, the Constitutional Court investigates whether specifically legal acts as such adopted by state institutions (Seimas, the President of the Republic, or the Government) are in conflict with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution, but it does not investigate the non-adoption of law-making decisions by the said state institutions, i.e. the avoidance or delay of adopting such decisions, as well as the failure to act that is determined by other motives. It also needs to be emphasised that, as mentioned before, under Paragraph 1 of Article 107 of the Constitution, a law (part thereof) of the Republic of Lithuania or another act (part thereof) of the Seimas, an act of the President of the Republic, or an act (part thereof) of the Government may not be applied from the day of the official publication of the decision of the Constitutional Court that the act in question (part thereof) is in conflict with the Constitution; this means that every legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government or that adopted by referendum where such a legal act has been declared in conflict with any higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, is removed from the Lithuanian legal system for good and may never be applied. After all, if the constitutional powers of the Constitutional Court were interpreted as also including the (alleged) powers to investigate and adopt a decision that the fact that state institutions do not adopt law-making decisions where no legal act is passed at all is in conflict with the Constitution or another higher-ranking legal act, it would become completely unclear how, in such cases, Paragraph 1 of Article 107 of the Constitution (which is a directly applicable act (Paragraph 1 of Article 6 of the Constitution)) must be applied, since, in such cases, there is no such a legal act (part thereof) that may be impugned at the Constitutional Court by the subjects specified in the Constitution. Thus, the said presumption would also deny and distort in substance the concept of the constitutional legal effects of acts adopted by the Constitutional Court.

… after the Constitutional Court recognises by its ruling that a lower-ranking legal act (part thereof) is in conflict with a higher-ranking legal act, *inter alia*, with the Constitution, the respective law-making subject is under the constitutional duty to declare such a legal act (part thereof) no longer valid or, if it is impossible to do without the concrete legal regulation of the social relationships in question, to change it so that a newly established legal regulation is not in conflict with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution. As long as this has not been done, the respective legal gap (which, as emphasised in this decision of the Constitutional Court, is not a legislative omission) remains. In order to remove it, a certain period of time may be necessary. However, despite the fact that this time might be quite lengthy, this does not in itself mean that the Constitutional Court is granted the powers to investigate the compliance of the same legal act with higher-ranking legal acts, *inter alia*, with the Constitution, where such same legal act has already been investigated from the same aspect by the Constitutional Court in a constitutional justice case that was considered previously and, upon the investigation of which and the entry into force of the respective ruling of the Constitutional Court, precisely the said legal gap occurred.

Thus, the Constitutional Court, which, under the Constitution, has the exclusive powers to investigate and adopt decisions regarding any consequences of law-making decisions (actions) of the Seimas, the President of the Republic, or the Government, i.e. regarding the compliance of legal acts (parts thereof) with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution, does not have any powers, under Paragraphs 1 and 2 of Article 105 and Paragraph 1 of Article 107 of the Constitution, to investigate the non-adoption of law-making decisions by state institutions the compliance of legal acts adopted by which with the Constitution is investigated by the Constitutional Court, i.e. it does not have any powers to investigate the avoidance and delay of adopting such decisions or such failure to act that is determined by other motives, even though gaps or other indeterminacies occur in the legal system due to such failure to act. Thus, the subjects that are pointed out in the Constitution and may impugn the compliance of precisely legal acts (parts thereof) adopted by the Seimas, the President of the Republic, or the Government or those adopted by referendum with higher-ranking legal acts, *inter alia*, with the Constitution, must not impugn the avoidance and delay of adopting such law-making decisions or such failure to act that is determined by other motives, where, due to such inaction, particular legal acts have not been passed, including those that must be passed

in order to lay down, by taking account of the acts adopted by the Constitutional Court, such a legal regulation that would be in compliance with the Constitution or other higher-ranking legal acts.

If the respective law-making subject has not passed a legal act (acts) (parts thereof) whereby a new (different) legal regulation would be established instead of a legal act (parts thereof) ruled by the Constitutional Court to be in conflict with a higher-ranking legal act, *inter alia*, with the Constitution, also, if the said subject has not passed a legal act (acts) (parts thereof) whereby a legal act (part thereof) ruled by the Constitutional Court to be in conflict with a higher-ranking legal act, *inter alia*, with the Constitution, is declared no longer valid, then, as held in this decision of the Constitutional Court, there is no legal act that may be impugned at the Constitutional Court by the subjects specified in the Constitution; thus, in such a case, there is no such legal act (part thereof) over which the Constitutional Court might exercise constitutional control.

[…]

… the fact that the subjects specified in the Constitution may not challenge before the Constitutional Court such failure of a law-making subject to act where, instead of a legal regulation that has been ruled by the Constitutional Court to be in conflict with a higher-ranking legal act, *inter alia*, with the Constitution, the said law-making subject has not passed a legal act (acts) (parts thereof) that would establish a new (different) legal regulation harmonised with the said higher-ranking legal acts, *inter alia*, with the Constitution, and where the Constitutional Court does not have the powers to investigate the non-adoption of such law-making decisions, does not mean that the aforementioned persons cannot defend (also in a court) their rights and freedoms that are violated because the said law-making decisions have not been adopted. The general legal principle of *ubi ius, ibi remedium*, the provision of Paragraph 1 of Article 6 of the Constitution, whereby the Constitution is a directly applicable act, the constitutional principle of responsible governance, the provision of Paragraph 3 of Article 5 of the Constitution, according to which state institutions serve the people, the provision of Article 18 of the Constitution, whereby human rights and freedoms are innate, as well as the constitutional right of a person who believes that his/her constitutional rights or freedoms are violated to apply to a court, imply not only that, in such cases, the rights, freedoms, legitimate interests, and legitimate expectations must and may be defended by means of interpreting the Constitution and by directly applying its provisions, but also that such protection must be guaranteed by courts.

The powers of the Constitutional Court to investigate the constitutionality of a legislative omission

The Constitutional Court's decision of 25 April 2012

… a petition that is based on a legislative omission presumed by the petitioner that filed it may be accepted and a case may be commenced following such a petition only if such arguments and reasoning are set out in the petition that substantiate the fact that, under the Constitution, the non-established legal regulation must be established in precisely that part of the legal act that is specified by the petitioner (decisions of 16 April 2004 and 16 November 2010).

8.3.4.2. The powers of the Constitutional Court to investigate the constitutionality of legal acts that are no longer in force

Dismissing legal proceedings where an impugned legal act is annulled

The Constitutional Court's ruling of 5 April 2000

Under [the Law on the Constitutional Court], the annulment of an impugned legal act constitutes grounds for adopting a decision on dismissing the instituted legal proceedings. The phrase "shall be grounds to adopt a decision to dismiss the instituted legal proceedings" must be interpreted as establishing the right of the Constitutional Court to dismiss the instituted legal proceedings while taking account of the

circumstances of the case under investigation, but not as stipulating that the instituted legal proceedings must be dismissed in every case where the respective impugned legal act is annulled.

Dismissing legal proceedings where an impugned legal act is annulled; the duty of the Constitutional Court to consider a petition filed by a court regardless of whether an impugned act is in force (Paragraph 1 of Article 102 and Article 110 of the Constitution)

The Constitutional Court's ruling of 21 August 2002

Under the Constitution, only the Constitutional Court decides whether laws and other acts of the Seimas are in conflict with the Constitution and whether the acts of the President of the Republic and the Government are in conflict with the Constitution or laws (Paragraph 1 of Article 102). Paragraph 1 of Article 110 of the Constitution provides that judges may not apply any laws that are in conflict with the Constitution. Under Paragraph 2 of the same article, in cases where there are grounds to believe that a law or another legal act that should be applied in a concrete case is in conflict with the Constitution, the judge must suspend the consideration of the case and must apply to the Constitutional Court, requesting that it decide whether the law or another legal act in question is in compliance with the Constitution.

These constitutional provisions mean that, in cases where a court considering a case, after it has doubts over the compliance of a law applicable in the case with the Constitution or the compliance of another act adopted by the Seimas, the President of the Republic, or the Government with the Constitution or laws, applies to the Constitutional Court, the Constitutional Court has the duty to consider the petition of the said court regardless of whether or not the impugned law or another legal act is in force.

… the phrase "shall be grounds to adopt a decision to dismiss the instituted legal proceedings" used in … the Law on the Constitutional Court must be interpreted as establishing the right for the Constitutional Court, while taking account of the circumstances of the case, to dismiss the instituted legal proceedings in cases where not courts, but other subjects specified in Article 106 of the Constitution have applied to the Constitutional Court; the aforementioned phrase must not be interpreted as stipulating that the instituted legal proceedings must be dismissed in every case where an impugned legal act is annulled.

The powers of the Constitutional Court to investigate the compliance of legal acts that are no longer in force with higher-ranking legal acts (Article 110 of the Constitution)

The Constitutional Court's ruling of 28 March 2006

… if a petitioner – a court considering a case – applies to the Constitutional Court, requesting an investigation into and a decision on whether a legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government or that adopted by referendum, where the said legal act is applicable in the case before that court, is in conflict with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, and, if the Constitutional Court does not decide this question on the merits, the doubts of the said court about whether the respective law or another legal act (part thereof) is in conflict with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, will not be removed and, if it applies such a law or another legal act (part thereof), the values, *inter alia*, the constitutional rights of a person, which are consolidated, defended, and protected by the Constitution, could be violated.

The same applies to such legal situations where an impugned law or another legal act (part thereof), which must be applied in a case before a court that has applied to the Constitutional Court with a petition, is no longer in force at the time when the respective constitutional justice case is under consideration (or at the time when its consideration is expected to take place) – it has been declared no longer valid (has been annulled or amended) or its validity has expired: if the Constitutional Court did not decide on the merits the question on the compliance of that law or another legal act (part thereof) with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, the doubts faced by the court considering the said case about whether the aforesaid law or another legal act (part thereof) is in conformity with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, would not be removed and, if the same law or

another legal act (part thereof) that is no longer in force is applied in the course of adopting the respective court decision, the values, *inter alia*, the constitutional rights of a person, which are consolidated, defended, and protected by the Constitution, could be violated.

Thus, in every case where the Constitutional Court, after it receives the petition of a court of general jurisdiction or a specialised court (established under Paragraph 2 of Article 111 of the Constitution) requesting an investigation into and a decision on whether a legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government or that adopted by referendum is in conflict with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, refuses, under the Constitution and the Law on the Constitutional Court, to consider such a petition (thus, does not decide the respective question on the merits), a rationally argued decision must be adopted.

[…]

… in general, the Constitution does not prohibit the establishment of such a legal regulation in the Law on the Constitutional Court that, in cases where an impugned legal act (part thereof) is no longer in force – it has been declared no longer valid (has been annulled or amended) or its validity has expired, would allow the Constitutional Court, while taking account of all important circumstances, to refuse to investigate and decide, subsequent to the petition of petitioners (as mentioned before, petitioners are specified in Article 106 of the Constitution), whether a legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government or that adopted by referendum is in conflict with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution and, in cases where, after the respective petition was received at the Constitutional Court, the preparation of the constitutional justice case has begun or the case has already been investigated at the hearing of Constitutional Court, would allow the Constitutional Court to dismiss the instituted legal proceedings (case).

However, it should be emphasised that, under the Constitution (*inter alia*, under Paragraph 1 of Article 110 of the Constitution, according to which judges may not apply any laws that are in conflict with the Constitution, and under Paragraph 2 of this article, according to which, in cases where there are grounds to believe that a law or another legal act that should be applied in a concrete case is in conflict with the Constitution, the judge must suspend the consideration of the case and must apply to the Constitutional Court, requesting that it decide whether the law or another legal act in question is in compliance with the Constitution), it is not allowed to establish any such a legal regulation whereby, in cases where the Constitutional Court receives a petition from precisely a court (which … differs from other subjects specified in Article 106 of the Constitution, *inter alia*, because a court, if it faces doubts regarding the compliance of a legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government or that adopted by referendum, where the said legal act is applicable in the case, with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, not only may, but also must apply to the Constitutional Court) requesting an investigation into and a decision on whether a legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government or that adopted by referendum is in conflict with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution and, if the Constitutional Court did not to decide this question on the merits (if it refused to consider the petition) specifically because the impugned legal act (part thereof) is no longer in force – it has been declared no longer valid (has been annulled or amended) or its validity has expired, the preconditions would be created for the court considering the respective case to apply such a law or another legal act (part thereof) whose compliance with the Constitution (another higher-ranking legal act), in the opinion of the said court, is doubtful; if the court applied such a law or another legal act (part thereof), the values, *inter alia*, the constitutional rights of a person, which are consolidated, defended, and protected by the Constitution, could be violated. Thus, it should be held that, under the Constitution, a court considering a case, which, under the Constitution, not only may, but also (if it has certain doubts) must apply to the Constitutional Court with a petition requesting a decision on whether the respective legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government or that adopted by referendum is in conflict with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, also has the constitutionally justifiable interest to receive

the respective answer from the Constitutional Court and that such an answer will be given; a different interpretation of the respective provisions of the Constitution could create the preconditions for a court considering a case to apply such a law or another legal act (part thereof) whose compliance with the Constitution (with another higher-ranking legal act), in the opinion of the said court, is doubtful. Thus, the Constitution prohibits the establishment of any such a legal regulation in the Law on the Constitutional Court (or in any other law) that would allow the Constitutional Court, in cases where an impugned legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government or that adopted by referendum is no longer in force – it has been declared no longer valid (has been annulled or amended) or its validity has expired, but it must be applied in the case before the court, to refuse to investigate and decide, subsequent to the petition of the said court, whether such a legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government or that adopted by referendum is in conflict with the Constitution (with another higher-ranking legal act) specifically because that legal act (part thereof) is no longer in force – it has been declared no longer valid (has been annulled or amended) or its validity has expired and, in cases where the respective petition is received at the Constitutional Court and the preparation of the constitutional justice case has begun, or the case has already been investigated at the hearing of the Constitutional Court, would allow the Constitutional Court to dismiss the instituted legal proceedings (case).

[…]

… the official constitutional doctrine eventually consolidated the provision that, in cases where courts apply to the Constitutional Court after they, in the course of the administration of justice, have doubts about the compliance of lower-ranking legal acts with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution … the Constitutional Court does not have the powers to dismiss the instituted legal proceedings (case) and must consider such a case; whereas in cases where other subjects specified in Article 106 of the Constitution apply to the Constitutional Court, the Constitutional Court is allowed, while taking account of the circumstances of a constitutional justice case under consideration, to dismiss or not to dismiss the instituted legal proceedings (case).

Dismissing legal proceedings where an impugned legal act is annulled

The Constitutional Court's ruling of 22 December 2011

As held by the Constitutional Court more than once, the phrase "shall be grounds … to dismiss the instituted legal proceedings" should be interpreted as establishing the right of the Constitutional Court, in cases where not courts, but other subjects specified in Article 106 of the Constitution have applied to the Constitutional Court, to dismiss the instituted legal proceedings while taking account of the circumstances of the case (*inter alia*, the rulings of 19 January 2005 and 28 March 2006 and the decisions of 31 May 2006, 29 December 2006, 28 May 2007, 25 February 2008, and 14 December 2009); gradually … in its jurisprudence, the Constitutional Court also made the interpretation that, in cases where not courts, but other subjects specified in Article 106 of the Constitution have applied to the Constitutional Court and where an impugned legal act (part thereof) is no longer in force – it has been declared no longer valid (has been annulled or amended) or its validity has expired, the Constitutional Court, while taking account of the circumstances of the case under consideration, has the powers to dismiss the instituted legal proceedings; however, the Constitutional Court is not obliged to dismiss the instituted legal proceedings in every case where an impugned legal act (part thereof) is no longer in force – it has been declared no longer valid (has been annulled or amended) or its validity has expired (ruling of 28 March 2006 and the decision of 8 August 2006).

It needs to be noted that the jurisprudence of the Constitutional Court has equated to invalid legal acts (parts thereof) such impugned legal acts (parts thereof) that, although were formally valid when the respective constitutional justice cases were under investigation, could not be applied because other legal acts (parts thereof) that were passed later and/or were higher-ranking legal acts that regulated the respective relationships differently from the impugned legal acts (parts thereof) had to be applied (ruling of 28 March 2006 and the decisions of 8 August 2006 and 13 November 2007). … such legal acts (parts

thereof) that are applied on a temporary basis and the term of the application of which and the relationships regulated by which have ended at the time of the consideration of the constitutional justice case, even though such acts (parts thereof) have not officially been declared invalid, may also be equated to invalid legal acts (parts thereof).

Thus, it needs to be noted that, in cases where not courts, but other subjects (*inter alia*, a group of not less than 1/5 of all the members of the Seimas) specified in Article 106 of the Constitution, apply to the Constitutional Court and where an impugned legal act (part thereof) should be equated to legal acts (parts thereof) that are no longer valid, since it is applied on a temporary basis and there is an established term of its application and the relationships regulated by it have ended, the Constitutional Court has the right to dismiss the instituted legal proceedings; however, the Constitutional Court is not obliged to do so in every situation. When deciding whether to dismiss the instituted legal proceedings, the Constitutional Court must take account of the circumstances of the case before it.

The powers of the Constitutional Court to decide on an investigation into the constitutionality of a legal act that is no longer applicable

The Constitutional Court's ruling of 29 June 2012

In its decision of 13 November 2007, the Constitutional Court held that the application of a court to the Constitutional Court with a petition requesting an investigation into the compliance of a legal act with a higher-ranking legal act, *inter alia*, with the Constitution, and an investigation into that compliance are not an objective in itself; the purpose of the application (as a constitutional institution) of a court to the Constitutional Court is to ensure the administration of justice. In the same decision, it was also held that, even in such situations where courts apply to the Constitutional Court after they, in the course of the administration of justice, have doubts regarding the conformity of a lower-ranking legal act with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution, the Constitutional Court is not obliged to consider a case where the respective legal act is not only invalid (since the compliance of invalid legal acts with higher-ranking legal acts may be investigated and is normally investigated), but is also not applicable at all (i.e. it does not apply in general and not solely in the case under consideration by the respective court that has applied to the Constitutional Court with the respective petition). In addition, this circumstance must always be assessed when a law on the state budget and on municipal budgets or any other act intended for a specific budget period is impugned.

Moreover, in the said decision, the Constitutional Court held that every law on the state budget and on municipal budgets is a law of time-limited validity and time-limited application; the financing of the administrators of allocations from the funds of the state budget and municipal budgets is completed once the given budget year ends, i.e. on the 31st of December of that year; after this date, the law on the state budget and on municipal budgets may not be applied at all, *inter alia* – it needs to be particularly emphasised – after the said date, the transfer of allocations of the previous budget year to any administrator of allocations is impossible in such a way that would create the impression that the said transfer was made in the previous budget year, since a new budget year has started; therefore, even if it were established that the impugned legal regulation was in conflict with the Constitution, no intervention of the law-making subjects (Seimas and the Government, respectively) into that legal regulation is possible, since the respective legal acts were intended for the regulation of the relationships that are over and, thus, they no longer exist; such an intervention would be meaningless and irrational, since this would mean that the respective law-making subjects try to regulate the past; consequently, this would mean that they attempt to change the past.

The powers of the Constitutional Court to decide on an investigation into the constitutionality of a legal act that is no longer applicable

The Constitutional Court's ruling of 15 February 2013

In its ruling of 22 December 2011, the Constitutional Court noted that, in cases where not courts, but other subjects (*inter alia*, a group of not less than 1/5 of all the members of the Seimas) specified in

Article 106 of the Constitution, apply to the Constitutional Court and where an impugned legal act (part thereof) should be equated to legal acts (parts thereof) that are no longer valid, since the impugned legal act (part thereof) is applied on a temporary basis and the relationships regulated by it have ended, even though this act (part thereof) is not recognised invalid officially, the Constitutional Court has the right to dismiss the instituted legal proceedings; however, the Constitutional Court is not obliged to do so in every situation. When deciding whether to dismiss the instituted legal proceedings, the Constitutional Court must take account of the circumstances of the case before it.

Thus, when a certain legal act is not only invalid, but also must not be applied at all, the Constitutional Court has the discretion to decide on an investigation into the constitutionality of such a legal act. When doing so, it must assess not only whether this law is intended for a certain budgetary period, but also other important circumstances, *inter alia*, whether such an investigation could be significant for the adoption of the budget laws of the subsequent year.

The duty of the Constitutional Court to examine the petition of a person referred to in Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution, regardless of whether the impugned legal act is in force

The Constitutional Court's ruling of 25 November 2019

The Constitutional Court has held on more than one occasion that the wording "shall be grounds … to dismiss the instituted legal proceedings" of Paragraph 4 (wording of 11 July 1996) of Article 69 of the Law on the Constitutional Court should be interpreted as establishing that, in cases where not courts, but other subjects specified in Article 106 of the Constitution, have applied to the Constitutional Court and the impugned legal act (part thereof) is no longer in force, i.e. it has been declared no longer valid (has been annulled or amended) or its validity has expired, the Constitutional Court, taking account of the circumstances of the case under consideration, has the right to dismiss the instituted legal proceedings (*inter alia*, the rulings of 28 March 2006 and 2 May 2012 and the decision of 7 October 2014), and it should not be interpreted as establishing that, in every case where the impugned legal act (part thereof) has been annulled, the instituted legal proceedings must be dismissed (*inter alia*, the rulings of 21 August 2002 and 28 March 2006).

The Constitutional Court has also held that the official constitutional doctrine concerning the admissibility of the petitions received at the Constitutional Court, according to which the Constitutional Court also has the powers to investigate the compliance of laws and other legal acts (parts thereof) that are no longer in force with the Constitution (other higher-ranking legal acts), has been developed "upon the differentiation of the subjects that are specified in Article 106 of the Constitution and have the powers to apply to the Constitutional Court: the official constitutional doctrine eventually consolidated the provision that, in cases where courts apply to the Constitutional Court after they, in the course of the administration of justice, have faced doubts about the compliance of lower-ranking legal acts with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution, under the Law on the Constitutional Court (*inter alia*, Paragraph 4 (wording of 11 July 1996) of Article 69 thereof), the Constitutional Court does not have the powers to dismiss the instituted legal proceedings (case) and must consider such a case; whereas in cases where other subjects specified in Article 106 of the Constitution apply to the Constitutional Court, the Constitutional Court is allowed, taking account of the circumstances of the constitutional justice case under consideration, to dismiss or not to dismiss the instituted legal proceedings (case)" (ruling of 28 March 2006).

In this context, it should be emphasised that, in the jurisprudence of the Constitutional Court, the provisions of the official constitutional doctrine consolidating the powers of the Constitutional Court to investigate the compliance of laws and other legal acts (parts thereof) that are no longer in force with the Constitution (other higher-ranking legal acts) were formulated in the rulings or decisions of the Constitutional Court adopted before 1 September 2019, when the Law Amending Articles 106 and 107 of the Constitution of the Republic of Lithuania, adopted by the Seimas on 21 March 2019, entered into force. Article 1 of this law supplemented Article 106 of the Constitution with the new Paragraph 4, establishing

that every person has the right to apply to the Constitutional Court concerning the legal acts specified in Paragraphs 1 and 2 of Article 105 of the Constitution if a decision adopted on the basis of these acts has violated the constitutional rights or freedoms of the person and the person has exhausted all legal remedies; the procedure for the implementation of this right is established by the Law on the Constitutional Court. Article 2 of the Law Amending Articles 106 and 107 of the Constitution supplemented Article 107 of the Constitution with the new Paragraph 3, establishing that, in the case heard subsequent to the application by a person referred to in Paragraph 4 of Article 106 of the Constitution, the decision adopted by the Constitutional Court that a law (or part thereof) or another act (or part thereof) of the Seimas, an act of the President of the Republic, or an act (or part thereof) of the Government is in conflict with the Constitution constitutes a basis for renewing, according to the procedure established by law, the proceedings concerning the implementation of the violated constitutional rights or freedoms of that person.

Thus, as of 1 September 2019, the Law Amending Articles 106 and 107 of the Constitution consolidated the institution of individual constitutional complaints in the Constitution: in defence of his/her constitutional rights or freedoms, every person has the right to apply to the Constitutional Court requesting it to investigate whether legal acts whose review falls within the competence of the Constitutional Court are in compliance with the Constitution (another higher-ranking act) if a decision adopted on the basis of these legal acts has possibly violated the constitutional rights or freedoms of the person (Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution); the right to apply to the Constitutional Court is implemented after the person has exhausted all legal remedies and in accordance with the other conditions established in the Law on the Constitutional Court (Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution), *inter alia*, within the time limit set by this law; in the constitutional justice case heard subsequent to the application by the person referred to above, the decision of the Constitutional Court that the respective legal act (part thereof) is in conflict with the Constitution (another higher-ranking act) constitutes a basis for renewing, according to the procedure established by law, the proceedings in order to defend the constitutional rights or freedoms of the said person (Paragraph 3 (wording of 21 March 2019) of Article 107 of the Constitution).

It should be emphasised that the consolidation of the institution of individual constitutional complaints in the Constitution is not an objective in itself. It is aimed at enabling the effective protection of those constitutional rights or freedoms of a person that could be violated by decisions adopted on the basis of legal acts (parts thereof) contrary to the Constitution. In this context, it should be noted that, under Paragraph 2 of Article 6 of the Constitution, everyone may defend his/her rights by invoking the Constitution. In its ruling of 12 April 2001, the Constitutional Court held that, according to the Constitution, the possibility of defending the violated rights must be real. In view of this, the basis provided for in Paragraph 3 (wording of 21 March 2019) of Article 107 of the Constitution for renewing the respective proceedings in order to defend the constitutional rights or freedoms of a person referred to in Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution – a decision of the Constitutional Court that a law (or part thereof) or another act (or part thereof) of the Seimas, an act of the President of the Republic, or an act (or part thereof) of the Government is in conflict with the Constitution – is necessary so that, in the exercise of the right, consolidated in Paragraph 1 of Article 30 of the Constitution, of a person whose constitutional rights or freedoms have been violated to apply to a court, a decision adopted on the basis of a legal act (part thereof) contrary to the Constitution would be reviewed with the aim of removing the violation of the constitutional rights or freedoms of the person and/or compensating the person for the damage caused as a result of this violation.

Having consolidated, by means of the provisions of Paragraph 4 (wording of 21 March 2019) of Article 106 and Paragraph 3 (wording of 21 March 2019) of Article 107 of the Constitution, the institution of individual constitutional complaints, the formerly formulated official constitutional doctrine consolidating the powers of the Constitutional Court to investigate also the compliance of laws and other legal acts (parts thereof) that are no longer in force with the Constitution (other higher-ranking legal acts) has been developed in the jurisprudence of the Constitutional Court by taking into account that also the persons referred to in

Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution may apply to the Constitutional Court concerning the legal acts specified in Paragraphs 1 and 2 of Article 105 of the Constitution.

In view of this, it should be noted that, if a person referred to in Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution has applied to the Constitutional Court with a request to investigate the constitutionality of the legal act (part thereof) that served as a basis for adopting a decision that could violate the constitutional rights or freedoms of the person and if the Constitutional Court does not decide this question on the merits in cases where the impugned law or another legal act is no longer in force, i.e. it has been declared no longer valid (has been annulled or amended) or its validity has expired, this would prevent such a person from defending his/her violated constitutional rights or freedoms; at the same time, other values consolidated, defended, and protected by the Constitution could also be violated. The interpretation of the Constitution that, purportedly, the Constitutional Court has the right, taking into account the circumstances of the case under consideration, to dismiss the instituted proceedings (case) where a person referred to in Paragraph 4 of Article 106 of the Constitution has applied to the Constitutional Court and the impugned legal act (part thereof) is no longer in force, i.e. it has been declared no longer valid (has been annulled or amended) or its validity has expired, would be incompatible with the purpose of the institution of individual constitutional complaints to enable the effective protection of the constitutional rights or freedoms of a person that have possibly been violated by a decision adopted on the basis of legal acts (parts thereof) contrary to the Constitution.

Consequently, in cases where a person referred to in Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution, after having exhausted all legal remedies and in accordance with the other conditions established in the Law on the Constitutional Court, applies to the Constitutional Court requesting it to investigate whether a law (part thereof) or another legal act (part thereof) is in compliance with the Constitution (another higher-ranking legal act) if a decision adopted on the basis of this law (part thereof) or another legal act (part thereof) could violate the constitutional rights or freedoms of the person, the Constitutional Court has the duty to examine the petition of this person, irrespective of whether the impugned law or another legal act is or is not in force at the time of considering the respective constitutional justice case.

Thus, the wording "shall be grounds … to dismiss the instituted legal proceedings" of Paragraph 4 (wording of 11 July 1996) of Article 69 of the Law on the Constitutional Court should be interpreted as establishing that, in cases where not courts and not the persons referred to in Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution, but other subjects specified in Article 106 of the Constitution, have applied to the Constitutional Court and the impugned legal act (part thereof) is no longer in force, i.e. it has been declared no longer valid (has been annulled or amended) or its validity has expired, the Constitutional Court, taking account of the circumstances of the case under consideration, has the right to dismiss the instituted legal proceedings, and it should not be interpreted as establishing that, in every case where the impugned legal act (part thereof) has been annulled, the instituted legal proceedings must be dismissed.

The duty of the Constitutional Court to examine an impugned legal act (part thereof) that is no longer in force

The Constitutional Court's ruling of 25 November 2019

… in the exercise of its constitutional powers, under Paragraph 4 (wording of 11 July 1996) of Article 69 of the Law on the Constitutional Court, in cases where not courts and not the persons referred to in Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution, but other subjects specified in Article 106 of the Constitution, have applied to the Constitutional Court and the impugned legal act (part thereof) is no longer in force, i.e. it has been declared no longer valid (has been annulled or amended or its validity has expired), taking into account the circumstances of the constitutional justice case under consideration and having held that, if the constitutional justice case under consideration is not solved on its merits, this could lead to the preconditions for violating the values consolidated, defended, and protected by

the Constitution, *inter alia*, a public interest defended by the Constitution, the Constitutional Court may not dismiss the instituted proceedings (case).

8.4. THE FOUNDATIONS OF LEGAL PROCEEDINGS AT THE CONSTITUTIONAL COURT

8.4.1. The subjects that have the powers to apply to the Constitutional Court and the requirements for petitions

Application by a group of members of the Seimas to the Constitutional Court; the withdrawal of the signatures of the members of the Seimas from a petition

The Constitutional Court's decision of 15 December 2004

Under Article 106 of the Constitution, not less than 1/5 of all the members of the Seimas have the right to apply to the Constitutional Court. … This means that a petition must be signed by not less than 29 members of the Seimas (decision of 26 August 1993). The will of the members of the Seimas to apply to the Constitutional Court must be expressed clearly and unambiguously (decision of 24 April 2002). If a petition to the Constitutional Court is submitted by a group of less than 29 members of the Seimas, it must be held that the subject that is established in the Constitution and is allowed to file a petition … is absent.

[…]

If the Constitutional Court granted the request of the members of the Seimas who withdrew their signatures from the petition received at the Constitutional Court … (and requesting an investigation into the compliance of the impugned provision … with the Constitution) to adopt the decision to refuse to consider the said … petition of the group of members of the Seimas, then the Constitutional Court would, in principle, deny the already implemented right of the group of members of the Seimas, i.e. a subject that has the right, under the Constitution … to apply to the Constitutional Court with a petition requesting an investigation into whether a legal act is in conflict with the Constitution. Thus, the Constitutional Court would deny the legitimate expectation of the other … members of the Seimas who signed the aforesaid petition … of the group of members of the Seimas that their already implemented right to apply, together with other members of the Seimas, to the Constitutional Court requesting an investigation into the compliance of a legal act with the Constitution will not be denied after their joint petition is received at the Constitutional Court and the procedural actions, indicated in the Law on the Constitutional Court and the Rules of the Constitutional Court, are commenced.

The duty of administrative courts that assess the compliance of legal acts with higher-ranking legal acts to verify whether such higher-ranking legal acts themselves are in conformity with legal acts of even a higher level

The Constitutional Court's ruling of 28 March 2006

… at present, such a legal regulation is established [by means of] laws whereby a decision on the compliance of legal acts passed by other law-making subjects (thus, not those passed by the Seimas, the President of the Republic, or the Government and not those adopted by referendum) with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution, is assigned to the jurisdiction of administrative courts. …

[…]

… an investigation into whether legal acts (parts thereof) passed by other law-making subjects (thus, not those passed by the Seimas, the President of the Republic, or the Government and not those adopted by referendum) are in conflict with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution, and the adoption of the respective decisions imply the necessity for an administrative court that decides a case to ascertain whether those higher-ranking legal acts (parts thereof) themselves are in conformity with legal acts of an even higher level, *inter alia* (and, first of all), with the Constitution, and, if there are doubts,

to take measures provided for in the Constitution and laws in order to remove the said doubts, certainly, without interfering with the powers assigned to the Constitutional Court. If this were not done, there would be the risk to adopt such a decision that would not be a just one, i.e. to apply a certain legal act (part thereof) based on such a higher-ranking legal act that would be declared in conflict with a legal act of an even higher level, or even with the Constitution itself, if a proper investigation were carried out, or not to apply a certain legal act (part thereof) declared in conflict with a higher-ranking legal act by the administrative court, even though that higher-ranking legal act would have to be declared in conflict with a legal act of an even higher level, or even with the Constitution itself, if a proper investigation were carried out. If this happened, the preconditions would be created for violating the values (*inter alia*, the constitutional rights of a person) that are consolidated, protected, and defended by the Constitution.

In this respect, an investigation, assigned [by means of laws] to the jurisdiction of administrative courts, into the compliance of legal acts (parts thereof) passed by other law-making subjects (thus, not those passed by the Seimas, the President of the Republic, or the Government or not those adopted by referendum) with higher-ranking legal acts, except the Constitution itself, implies the initiation of the respective constitutional justice case at the Constitutional Court and, thus, also the duty of administrative courts to apply in such cases to the Constitutional Court with the respective petition if an administrative court has doubts about the conformity of that higher-ranking legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government or that adopted by referendum with a legal act of an even higher level, *inter alia* (and, first of all), with the Constitution.

The right of a party to a case to request the court that considers the case to apply to the Constitutional Court

The Constitutional Court's ruling of 28 March 2006

Interpreting Paragraph 2 of Article 6 and Paragraph 1 of Article 30 of the Constitution in the context of Paragraph 1 of Article 109 and Article 110 of the Constitution, as well as in the context of the constitutional principle of a state under the rule of law, it needs to be noted that the right of each person to defend his/her rights on the basis of the Constitution and the right of a person whose constitutional rights or freedoms are violated to apply to a court also imply that each party of a case considered by a court, when such a party has doubts over the compliance of a law or another legal act (part thereof) with the Constitution (with another higher-ranking legal act), where such a law or another legal act (part thereof) may be applied in that case and where an investigation into the compliance of which with the Constitution (with another higher-ranking legal act) falls under the jurisdiction of the Constitutional Court (i.e. when such a party doubts the compliance of a certain act (part thereof) of the Seimas, the President of the Republic, or the Government or an act (part thereof) adopted by referendum with the Constitution (with another higher-ranking legal act)), has the right to apply to a court of general jurisdiction or a specialised court (established under Paragraph 2 of Article 111 of the Constitution) that considers the respective case, requesting such a court to suspend the consideration of the case and to apply to the Constitutional Court with the petition to investigate and to decide whether the legal act (part thereof) that was passed by the Seimas, the President of the Republic, or the Government or adopted by referendum and is applicable in the same case is in conflict with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution.

The duty of courts to provide arguments in cases where they decide to apply or not to apply (despite the request of a party to the case) to the Constitutional Court

The Constitutional Court's ruling of 28 March 2006

In its ruling of 16 January 2006, the Constitutional Court held the following: the constitutional imperatives that only courts administer justice, that law must be public, as well as the requirement arising out of the Constitution to consider a case in a fair manner, also imply that every final court act must be based on legal arguments (reasoning); the argumentation must be rational; the legal clarity requirement, which arises out of the constitutional principle of a state under the rule of law, means, *inter alia,* that a final court

act must not contain any concealed arguments or any non-specified circumstances that are important for adopting a fair final court act; final court acts must be clear for both persons participating in a case and other persons.

The said requirements on the argumentation of court decisions are also applicable to decisions adopted by courts of general jurisdiction or by specialised courts (established under Paragraph 2 of Article 111 of the Constitution) to apply or (even though this is requested by a party in a case considered by that court) not to apply to the Constitutional Court with a petition requesting an investigation into and a decision on whether a legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government or that adopted by referendum, where the said legal act (part thereof) must be applied in the said case, is in conflict with a higher-ranking legal act (*inter alia* (and, first of all), with the Constitution).

The particularities of application by courts to the Constitutional Court

The Constitutional Court's ruling of 28 March 2006

… application by courts (those of general jurisdiction and specialised ones) to the Constitutional Court, compared with application to the Constitutional Court by other subjects specified in Article 106 of the Constitution, with a petition requesting an investigation into and a decision on whether a legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government or that adopted by referendum is in conflict with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, shows that application by courts is also special because courts, having doubted about the compliance of a legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government or that adopted by referendum with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, not only may, but also must apply to the Constitutional Court.

In this context, it should be noted that, under the Constitution, a court of general jurisdiction or a specialised court (established under Paragraph 2 of Article 111 of the Constitution) may apply to the Constitutional Court with a petition requesting an investigation into, and an a decision on whether not any constitutional law (part thereof) is in conflict with the Constitution, but only such a constitutional law that must be applied in the respective case under consideration by that court, also whether not any law (part thereof) (as well as the Statute of the Seimas (part thereof)) is in conflict with the Constitution and constitutional laws, but only the one that must be applied in the respective case under consideration by that court, also whether not any substatutory legal act (part thereof) of the Seimas is in conflict with the Constitution, constitutional laws, laws, as well as the Statute of the Seimas, but only the one that must be applied in the respective case under consideration by that court, also whether not any act of the President of the Republic is in conflict with the Constitution, constitutional laws, and laws, but only the one that must be applied in the respective case under consideration by that court, as well as whether not any act (part thereof) of the Government is in conflict with the Constitution, constitutional laws, and laws, but only the one that must be applied in the respective case under consideration by that court.

[…]

It should be noted that the Constitution does not tolerate any such situations where a certain court that, in a case considered by it, must apply a legal act (part thereof) concerning the compliance of which with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, another petitioner (for example, another court) has already applied to the Constitutional Court, neither (if it doubts the compliance of the said legal act (part thereof) with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution) suspends the consideration of the respective case and applies to the Constitutional Court in order that these doubts would be removed nor (if it doubts the compliance of the said legal act (part thereof) with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution) applies this legal act (part thereof), but when it has the information that another petitioner (for example, another court) has already applied to the Constitutional Court concerning the compliance of that legal act (part thereof) with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, suspends the consideration of the case and does not

decide the case on the merits before the Constitutional Court completes the consideration of the respective case following the petition of the said another petitioner.

The right of courts to apply to the Constitutional Court *(locus standi)* (Paragraph 2 of Article 110 of the Constitution)

The Constitutional Court's decision of 22 May 2007

Under Paragraph 2 of Article 110 of the Constitution, in cases when there are grounds to believe that a law or another legal act that should be applied in a concrete case is in conflict with the Constitution, the judge must suspend the consideration of the case and must apply to the Constitutional Court, requesting that it decide whether the law or another legal act in question is in compliance with the Constitution.

[…]

Consequently, under the Constitution … a court may apply to the Constitutional Court with a petition requesting an investigation into whether not any law (part thereof) or any other legal act (part thereof) is in conflict with the Constitution, but only such a law (part thereof) or another legal act (part thereof) that must be applied in the case considered by that court.

Thus, under the Constitution … a court does not have the *locus standi* to apply to the Constitutional Court with a petition requesting an investigation into whether such a law (part thereof) or another legal act (part thereof) that must not be applied in the case considered by that court is in conflict with the Constitution.

[…]

In addition, if a court applies to the Constitutional Court with a petition requesting an investigation into whether such a law (part thereof) or another legal act (part thereof) that should/could not be applied in the case considered by that court is in conflict with the Constitution (thus, when the court does not have a *locus standi*), the Constitutional Court must decide, while taking account of the entirety of the arguments substantiating such a petition, whether the reasoning of the said petition is legal.

The duty of a court, if it has doubts, to apply to the Constitutional Court concerning the constitutionality of a legal act applicable in a case before that court (Paragraph 2 of Article 110 of the Constitution)

The Constitutional Court's ruling of 24 October 2007

The powers of courts to suspend the consideration of a case and apply to the Constitutional Court with a petition requesting an investigation into the compliance of a legal act with the Constitution are *expressis verbis* consolidated in the Constitution: Paragraph 2 of Article 110 of the Constitution prescribes that, in cases when there are grounds to believe that a law or another legal act that should be applied in a concrete case is in conflict with the Constitution, the judge must suspend the consideration of the case and must apply to the Constitutional Court, requesting that it decide whether the law or another legal act in question is in compliance with the Constitution.

… the following provisions of the official constitutional doctrine should be mentioned … in which Article 110 of the Constitution is interpreted by relating it to other provisions of the Constitution, *inter alia*, to the constitutional principle of a state under the rule of law and to the provisions of the Constitution regarding specialised (administrative) courts:

– one of the essential elements of the principle of a state under the rule of law, which is consolidated in the Constitution, is the principle that any legal act that is in conflict with a higher-ranking legal act must not be applied;

– upon establishing, in Article 110 of the Constitution, both the prohibition on applying a law that is in conflict with the Constitution and the duty of a court considering a case, in the event of doubts whether a law or another legal act applicable in the case is in conflict with the Constitution, to suspend the consideration of the case and apply to the Constitutional Court, requesting it to decide whether the law or another legal act in question is in compliance with the Constitution, attempts are made to ensure that a legal act (part thereof)

that is in conflict with the Constitution would not be applied, that no anticonstitutional legal effects would appear due to the application of the said legal act (part thereof), and that no rights of a person would be violated, and that a person in whose regard a legal act inconsistent with the Constitution or the law has been applied would not, due to that, unreasonably acquire any rights or a certain legal status that does not belong to him/her;

– in cases where a court that considers a case faces doubts whether a law (another legal act) applicable in the case is in conflict with the Constitution, it must apply to the Constitutional Court and request it to decide whether this law (other legal act) is in compliance with the Constitution and, until the Constitutional Court decides this issue, the consideration of the case in that court must not be continued, i.e. it must be suspended …

– a legal regulation established by the legislature must be such that would ensure access for the Constitutional Court to a suspended case that contains information about the circumstances due to which an impugned legal act must be applied in the said case; only in this way the necessary conditions can be created in order that the Constitutional Court might administer constitutional justice and decide whether a law or another legal act that must be applied in the case considered by that court is in conflict with the Constitution (or whether a substatutory legal act of the Seimas, an act of the President of the Republic, or an act of the Government is in conflict with the Constitution and/or laws);

– if a court, after it has faced doubts about the compliance of a law applicable in a case with the Constitution, did not suspend the consideration of the case and did not apply to the Constitutional Court so that those doubts could be removed and, if the legal act the compliance of which with the Constitution is doubtful were applied in the case, the court would take the risk of adopting such a decision that would not be a just one;

– under the Constitution, the Constitutional Court decides on the compliance of not all legal acts (parts thereof) with the Constitution (other higher-ranking legal acts), but only whether legal acts (part thereof) passed by the Seimas, the President of the Republic, or the Government or adopted by referendum are in conflict with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution;

– under the Constitution, such legal situations are impermissible where it would not be possible to verify in a court whether legal acts (parts thereof), *inter alia*, legal acts issued by ministers, other lower-ranking legal acts, as well as legal acts issued by municipalities, the control of which as regards their compliance with the Constitution does not fall within the jurisdiction of the Constitutional Court, are in conflict with the Constitution and laws;

[…]

– at present, such a legal regulation is established [by means of] laws whereby a decision on the compliance of legal acts passed by other law-making subjects (thus, not those passed by the Seimas, the President of the Republic, or the Government and not those adopted by referendum) with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution, is assigned to the jurisdiction of administrative courts; if an administrative court rules such a legal act to be in conflict with the Constitution (another higher-ranking legal act), then, under the Constitution and laws, such a decision of the said court has *erga omnes* impact on the whole practice of the application of the respective legal acts (parts thereof) …

Requirements for court petitions filed with the Constitutional Court

The Constitutional Court's ruling of 24 October 2007

… The requirements (*inter alia*, regarding the argumentation, clarity, and comprehensiveness of court decisions) for court final acts are also applicable to decisions adopted by courts of general jurisdiction or by specialised courts (established under Paragraph 2 of Article 111 of the Constitution) to apply or (even though this is requested by a party in a case considered by that court) not to apply to the Constitutional Court with a petition requesting an investigation into and a decision on whether a legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government or that adopted by referendum, where the said

legal act (part thereof) must be applied in the said case, is in conflict with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution (rulings of 28 March 2006 and 5 July 2007).

… as the Constitutional Court has held in its acts, courts that apply to the Constitutional Court with a petition requesting an investigation into whether a law or another legal act (part thereof) is in conflict with the Constitution, when providing arguments in support of their opinion, expressed in their petition, on the conflict of a law or another legal act (part thereof) with the Constitution, may not limit themselves to general reasoning or general statements, or to the statement that the law or another legal act (part thereof), in their opinion, is in conflict with the Constitution; courts must clearly indicate which impugned articles (paragraphs, items thereof) of legal acts and to what extent, in their opinion, are in conflict with the Constitution, and must substantiate their position on the non-compliance of every impugned provision of the respective legal act (part thereof) by clearly formulated legal arguments (rulings of 12 December 2005, 16 January 2006, and 17 January 2006 and the decisions of 17 January 2006, 5 July 2007, 6 September 2007, and 12 September 2007).

The right of courts to apply to the Constitutional Court *(locus standi)*

The Constitutional Court's decision of 13 November 2007

… a court that applies to the Constitutional Court with a petition must always have a *locus standi*. For instance, under the Constitution … a court has the *locus standi* to apply to the Constitutional Court with a petition requesting an investigation into the constitutionality of such a law (part thereof) or another legal act (part thereof) that should (could) be applied in a case under consideration in that court, or such a law (part thereof) or another legal act (part thereof) that is not directly intended for the regulation of those relationships regarding which a decision must be adopted in the respective case, but the fact that account is taken of this law or another legal act (part thereof), in the opinion of the court, does not permit the administration of justice in the respective case (ruling of 28 March 2006 and the decisions of 22 May 2007, 27 June 2007, and 5 July 2007).

Requirements for petitions filed with the Constitutional Court

The Constitutional Court's decision of 29 October 2009

… as held by the Constitutional Court, the position of a petitioner concerning the compliance of a legal act (part thereof) with the Constitution in view of the content of norms and/or the scope of regulation must be indicated clearly and unambiguously, the petition must contain the arguments and reasoning substantiating the doubt of the petitioner that the legal act (part thereof) is in conflict with the Constitution. A petition requesting an investigation into the compliance of a legal act (part thereof) with the Constitution according to the content of norms and/or the scope of regulation must also clearly indicate the legal arguments substantiating the doubt of the petitioner as regards every concretely indicated article (part thereof) or item of an impugned legal act the compliance of which with the concretely indicated provision of the Constitution is doubtful for the petitioner (decision of 16 April 2004, the ruling of 12 December 2005, the decisions of 14 March 2006 (case no 14/03) and 29 March 2006, and the ruling of 20 December 2007).

Application by a court to the Constitutional Court with a petition requesting the interpretation of a final act adopted by the Constitutional Court

See 8.5. Acts adopted by the Constitutional Court, 8.5.4. The interpretation of acts adopted by the Constitutional Court, the decision of 22 April 2010 ("The interpretation of final acts adopted by the Constitutional Court where this is necessary so that such acts would be properly invoked in the administration of justice").

The purpose of application by a court to the Constitutional Court is to ensure that justice will be administered

The Constitutional Court's decision of 27 August 2013

… the application by a court to the Constitutional Court with a petition for an investigation into the compliance of a legal act with a higher-ranking legal act, *inter alia*, with the Constitution, as well as an investigation into the said compliance, is not an objective in itself; the purpose of the application (as a constitutional institution) by a court to the Constitutional Court is to ensure the administration of justice (decision of 13 November 2007 and the rulings of 2 September 2011 and 29 June 2012).

A resolution of the Seimas to apply to the Constitutional Court must be adopted in accordance with the rules for adopting legal acts, as laid down in the Statute of the Seimas

The Constitutional Court's decision of 30 December 2015

… as held in the Constitutional Court's ruling of 20 February 2013, not only laws, but also substatutory legal acts of the Seimas must be adopted in compliance with the rules for adopting legal acts, as established in the Statute of the Seimas. The same also applies to resolutions of the Seimas to apply to the Constitutional Court with a petition requesting an investigation of legal acts with the Constitution or another higher-ranking legal act.

The right of courts to apply to the Constitutional Court *(locus standi*) (Paragraph 2 of Article 110 of the Constitution)

The Constitutional Court's decision of 7 July 2016

Under Paragraph 2 of Article 110 of the Constitution, in cases when there are grounds to believe that a law or another legal act that should be applied in a concrete case is in conflict with the Constitution, the judge must suspend the consideration of the case and must apply to the Constitutional Court, requesting that it decide whether the law or another legal act in question is in compliance with the Constitution.

Under the Constitution, a court may apply to the Constitutional Court with a petition requesting an investigation into whether not any law (part thereof) or any other legal act (part thereof) is in conflict with the Constitution, but only such a law (part thereof) or another legal act (part thereof) that must be applied in the case considered by that court (decision of 27 June 2007). Under the Constitution, a court does not have the *locus standi* to apply to the Constitutional Court with a petition requesting an investigation into whether such a law (part thereof) or another legal act (part thereof) that must not be applied in the case considered by that court is in conflict with the Constitution (*inter alia*, the decisions of 22 May 2007 and 27 June 2007).

In this context, it should be noted that the provision that, under the Constitution, no court has the *locus standi* to apply to the Constitutional Court with a petition requesting an investigation into whether such a law (part thereof) or another legal act (part thereof) that should (could) not be applied in a case considered by the said court is in conflict with the Constitution also means that a court may not apply to the Constitutional Court with a petition requesting an investigation into the constitutionality of a legal regulation in situations where this is not required for the consideration of a concrete case.

The examination of factual circumstances on which an individual substatutory legal act is based falls within the competence of the court applying to the Constitutional Court concerning the assessment of the constitutionality of that legal act

The Constitutional Court's decision of 23 January 2019

… the examination of factual circumstances and data that form the basis for individual substatutory legal acts, as well as the assessment of the reasonableness and sufficiency of data, primarily falls within the competence of courts that consider the respective cases (*inter alia*, the rulings of 13 August 2007 and 2 March 2018).

A person referred to in Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution does not have the right to apply to the Constitutional Court if the person seeks to defend the constitutional rights or freedoms of another person (other persons)

The Constitutional Court's decision (no KT33-A-S22/2019) of 16 October 2019

Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution provides that every person has the right to apply to the Constitutional Court concerning the legal acts specified in Paragraphs 1 and 2 of Article 105 of the Constitution if a decision adopted on the basis of these acts has violated the constitutional rights or freedoms of the person and the person has exhausted all legal remedies.

Thus, under Paragraph 4 of Article 106 of the Constitution, only such a person whose constitutional rights or freedoms have possibly been violated by a decision adopted on the basis of the acts specified in Paragraphs 1 and 2 of Article 105 of the Constitution has the right to apply to the Constitutional Court; under Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution, a person does not have the right to apply to the Constitutional Court if the person seeks to defend the constitutional rights or freedoms of another person (other persons).

Having failed to exhaust all remedies provided for by law for defending constitutional rights or freedoms and being no longer able to exhaust them, a person referred to in Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution has no right to apply to the Constitutional Court

The Constitutional Court's decision (no KT34-A-S23/2019) of 17 October 2019

Under Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution, every person has the right to apply to the Constitutional Court concerning the legal acts specified in Paragraphs 1 and 2 of Article 105 of the Constitution if a decision adopted on the basis of these acts has violated the constitutional rights or freedoms of the person and the person has exhausted all legal remedies; the procedure for the implementation of this right is established by the Law on the Constitutional Court.

Paragraph 2 of Article 65 (wording of 16 July 2019) of the Law on the Constitutional Court provides that a person has the right to file a petition with the Constitutional Court for an investigation into the compliance of laws or other acts of the Seimas, the acts of the President of the Republic, or the acts of the Government with the Constitution or laws if: (1) a decision adopted on the basis of these acts has violated the constitutional rights or freedoms of the person, and (2) the person has exhausted all remedies provided for by law for defending constitutional rights or freedoms, including the right to apply to a court, and, after all possibilities established by law for filing a complaint against the decision of the court have been exhausted, the final and non-appealable decision is adopted by the court, and (3) not more than four months have passed from the day that the court decision referred to in Item 2 of this paragraph came into force.

In view of the above, under the Constitution and the Law on the Constitutional Court, a person has the right to apply to the Constitutional Court regarding the acts referred to in Paragraphs 1 and 2 of Article 105 of the Constitution only if, in accordance with the procedure laid down by law, the person has exhausted all remedies provided for by law for defending constitutional rights or freedoms, including the right to apply to a court, and, after all possibilities established by law for filing a complaint against the decision of the court have been exhausted, the final and non-appealable decision is adopted by the court.

[…]

It should be noted that, under Item 2 of Paragraph 1 (wording of 16 July 2019) of Article 70 of the Law on the Constitutional Court, where a person referred to in Paragraph 4 of Article 106 of the Constitution has not exhausted all remedies provided for by law for defending constitutional rights or freedoms, including the right to apply to a court, the President of the Constitutional Court, on his/her own initiative or upon a proposal from the justice, returns the petition to the petitioner.

It should also be noted that, where it is clear that a person referred to in Paragraph 4 of Article 106 of the Constitution is no longer able to make use of all remedies provided for by law for defending constitutional rights or freedoms, including the right to apply to a court and the right to file a complaint against the decision of a court, the decision to return the petition to the petitioner would be an objective in itself and meaningless.

Thus, under Item 2 of Paragraph 1 (wording of 16 July 2019) of Article 70 of the Law on the Constitutional Court, only where a person referred to in Paragraph 4 of Article 106 of the Constitution has not exhausted all remedies provided for by law for defending constitutional rights or freedoms, including the

right to apply to a court and the right to file a complaint against the decision of a court, but may still exhaust them, the petition is returned to the petitioner.

In view of this, it should be held that, having failed to exhaust all remedies provided for by law for defending constitutional rights or freedoms and being no longer able to exhaust them, a petitioner has no right to apply under Paragraph 4 of Article 106 of the Constitution to the Constitutional Court with a petition requesting an investigation into the constitutionality of the legal acts specified in Paragraphs 1 and 2 of Article 105 of the Constitution.

A person referred to in Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution does not have the right to apply to the Constitutional Court if the impugned legal regulation has not led to the adoption of a decision that may have violated the constitutional rights or freedoms of that person

The Constitutional Court's decision (no KT43-A-S31/2019) of 6 November 2019

Under Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution, every person has the right to apply to the Constitutional Court concerning the legal acts specified in Paragraphs 1 and 2 of Article 105 of the Constitution if a decision adopted on the basis of these acts has violated the constitutional rights or freedoms of the person and the person has exhausted all legal remedies.

Thus, a person referred to in Paragraph 4 of Article 106 of the Constitution has the right to apply to the Constitutional Court requesting an investigation into the compliance with the Constitution and/or laws of not any acts specified in Paragraphs 1 and 2 of Article 105 of the Constitution, but only those acts specified therein a decision adopted on the basis of which has possibly violated the constitutional rights or freedoms of the person. Consequently, under the Constitution, the above-mentioned person does not have the right to apply to the Constitutional Court concerning the legal acts specified in Paragraphs 1 and 2 of Article 105 of the Constitution if [no such a decision has been adopted] on the basis of the said legal acts.

Individual constitutional complaints (Paragraph 4 (wording of 21 March 2019) of Article 106 and Paragraph 3 (wording of 21 March 2019) of Article 107 of the Constitution)

The Constitutional Court's ruling of 25 November 2019

… Article 1 of the Law Amending Articles 106 and 107 of the Constitution of the Republic of Lithuania supplemented Article 106 of the Constitution with the new Paragraph 4, establishing that every person has the right to apply to the Constitutional Court concerning the acts specified in Paragraphs 1 and 2 of Article 105 of the Constitution if a decision adopted on the basis of these acts has violated the constitutional rights or freedoms of the person and the person has exhausted all legal remedies; the procedure for the implementation of this right is established by the Law on the Constitutional Court. Article 2 of the Law Amending Articles 106 and 107 of the Constitution supplemented Article 107 of the Constitution with the new Paragraph 3, establishing that, in the case heard subsequent to the application by a person referred to in Paragraph 4 of Article 106 of the Constitution, the decision adopted by the Constitutional Court that a law (or part thereof) or another act (or part thereof) of the Seimas, an act of the President of the Republic, or an act (or part thereof) of the Government is in conflict with the Constitution constitutes a basis for renewing, according to the procedure established by law, the proceedings concerning the implementation of the violated constitutional rights and freedoms of that person.

Therefore, as of 1 September 2019, the Law Amending Articles 106 and 107 of the Constitution consolidated the institution of individual constitutional complaints in the Constitution: in defence of constitutional rights or freedoms, every person has the right to apply to the Constitutional Court requesting it to investigate whether legal acts whose review falls within the competence of the Constitutional Court are in compliance with the Constitution (another higher-ranking act) if a decision adopted on the basis of these legal acts has possibly violated the constitutional rights or freedoms of the person (Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution); the right to apply to the Constitutional Court is

implemented after the person has exhausted all legal remedies and in accordance with the other conditions established in the Law on the Constitutional Court (Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution), *inter alia*, within the time limit set by this law; in the constitutional justice case heard subsequent to the application by the person referred to above, the decision of the Constitutional Court that the respective legal act (part thereof) is in conflict with the Constitution (another higher-ranking legal act) constitutes a basis for renewing, according to the procedure established by law, the proceedings in order to protect the constitutional rights or freedoms of the said person (Paragraph 3 (wording of 21 March 2019) of Article 107 of the Constitution).

It should be emphasised that the consolidation of the institution of individual constitutional complaints in the Constitution is not an objective in itself. It is aimed at enabling the effective protection of those constitutional rights or freedoms of a person that could be violated by decisions adopted on the basis of legal acts (parts thereof) contrary to the Constitution. In this context, it should be noted that, under Paragraph 2 of Article 6 of the Constitution, everyone may defend his/her rights by invoking the Constitution. In its ruling of 12 April 2001, the Constitutional Court held that, according to the Constitution, the possibility of defending the violated rights must be real. In view of this, the basis provided for in Paragraph 3 (wording of 21 March 2019) of Article 107 of the Constitution for renewing the respective proceedings in order to defend the constitutional rights or freedoms of a person referred to in Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution – a decision of the Constitutional Court that a law (or part thereof) or another act (or part thereof) of the Seimas, an act of the President of the Republic, or an act (or part thereof) of the Government is in conflict with the Constitution – is necessary so that, in the exercise of the right, consolidated in Paragraph 1 of Article 30 of the Constitution, of a person whose constitutional rights or freedoms have been violated to apply to a court, a decision adopted on the basis of a legal act (part thereof) contrary to the Constitution would be reviewed with the aim of removing the violation of the constitutional rights or freedoms of the person and/or compensating the person for the damage caused as a result of this violation.

A person referred to in Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution has the right to apply to the Constitutional Court after having exhausted all remedies provided for by law for defending constitutional rights or freedoms

The Constitutional Court's decision (no KT63-A-S49/2019) of 11 December 2019

The Constitutional Court has noted that, under the Constitution and the Law on the Constitutional Court, a person has the right to apply to the Constitutional Court concerning the acts specified in Paragraphs 1 and 2 of Article 105 of the Constitution only if, in accordance with the procedure laid down by law, the person has exhausted all available remedies for defending constitutional rights or freedoms, including the right to apply to a court, and, after all possibilities established by law for filing a complaint against the decision of the court have been exhausted, the final and non-appealable decision is adopted by the court (decision (no KT37-A-S26/2019) of 22 October 2019).

Therefore, under the Constitution and the Law on the Constitutional Court, a person is deemed to have exhausted all remedies provided for by law for defending constitutional rights or freedoms only where not only all possibilities established by law for filing a complaint against the decision of the court have been exhausted, but also the final and non-appealable decision of the court is adopted and it has not protected the constitutional rights or freedoms of the said person.

The particularities of the right of a person referred to in Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution to apply to the Constitutional Court (time limit for applying to the Constitutional Court)

The Constitutional Court's decision of 16 January 2020

… the right of a person referred to in Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution to apply to the Constitutional Court must be implemented within the time limit set by the Law on the Constitutional Court; this time limit is linked to the date on which the final and non-appealable decision of the court came into force. It should be noted that a person referred to in Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution is the only subject with the right to apply to the Constitutional Court with a petition for an investigation into the constitutionality of legal acts who is given the time limit for applying to the Constitutional Court.

[…]

… the time limit for filing a petition with the Constitutional Court by a person referred to in Paragraph 4 of Article 106 of the Constitution is not an objective in itself: it is sought thereby not to deny the stability of the legal relationships established and upheld by effective court decisions, as well as to provide time for this person to decide whether to apply to the Constitutional Court requesting it to investigate whether legal acts whose review falls within the competence of the Constitutional Court are in compliance with the Constitution (another higher-ranking act) if a decision adopted on the basis of these legal acts could violate the constitutional rights or freedoms of the person, and, having decided to apply to the Constitutional Court, to prepare and submit to the Constitutional Court a petition that meets the requirements established in the Law on the Constitutional Court.

The particularities of the right of a person referred to in Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution to apply to the Constitutional Court (time limit for applying to the Constitutional Court)

The Constitutional Court's decision (no KT17-A-S17/2020) of 5 February 2020

The Constitutional Court has held that, among other conditions, the right of a person referred to in Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution to apply to the Constitutional Court must be implemented within the time limit set by the Law on the Constitutional Court; this time limit is linked to the date on which the final and non-appealable decision of the court came into force (decision (no KT6-A-S6/2020) of 16 January 2020). The Constitutional Court has also held on more than one occasion that the constitutional right to apply to the Constitutional Court concerning the acts specified in Paragraphs 1 and 2 of Article 105 of the Constitution was acquired as of 1 September 2019 only by those persons with respect to whom the final and non-appealable decision of the court in the case concerning the violation of their constitutional rights or freedoms came into force on 1 May 2019 and later (*inter alia*, the decisions (nos KT29-A-S18/2019 and KT30-A-S19/2019) of 10 October 2019 and the decision (no KT58-A-S44/2019) of 3 December 2019).

Thus, the time limit for filing a petition with the Constitutional Court is calculated from the date on which the final and non-appealable decision of the court came into force also for those persons with respect to whom the final and non-appealable decision of the court in the case concerning the violation of their constitutional rights or freedoms came into force before 1 September 2019, but not earlier than on 1 May 2019.

The renewal of the time limit established for a person referred to in Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution to apply to the Constitutional Court

The Constitutional Court's decision (no KT17-A-S17/2020) of 5 February 2020

… the time limit for applying to the Constitutional Court may be renewed only in exceptional cases, where it is established that, during the period of this time limit, exceptional and objective circumstances

existed, which did not dependent on the will of the person and prevented the person from exercising the right to apply to the Constitutional Court in a timely and proper manner. It should be noted that persons who believe that their constitutional rights or freedoms have been violated not only have the right to defend them but, having decided to exercise this right, have the duty to do so expeditiously, responsibly, carefully, and in good faith.

8.4.2. Issues that do not fall within the jurisdiction of the Constitutional Court and other grounds for refusing the consideration of petitions

The Constitutional Court does not investigate the compliance of a law with an international treaty ratified by the Seimas (Paragraph 1 of Article 105 and Paragraph 3 of Article 138 of the Constitution)

The Constitutional Court's decision of 25 April 2002

Paragraph 3 of Article 138 of the Constitution prescribes:

"International treaties ratified by the Seimas of the Republic of Lithuania shall be a constituent part of the legal system of the Republic of Lithuania."

Interpreting this provision of the Constitution, the Constitutional Court has held that the said provision means that treaties ratified by the Seimas acquire the force of a law (ruling of 17 October 1995).

Under Paragraph 1 of Article 105 of the Constitution, the Constitutional Court considers and adopts decisions on whether the laws of the Republic of Lithuania or other acts adopted by the Seimas are in conflict with the Constitution of the Republic of Lithuania. Thus, under the Constitution, the Constitutional Court does not consider the conformity of a law with a legal act having the force of a law.

The development of the official constitutional doctrine does not constitute grounds for addressing the Constitutional Court repeatedly with the same petition or inquiry

The Constitutional Court's ruling of 28 March 2006

… as such, no development of the official constitutional doctrine (*inter alia*, such reinterpretation of the official constitutional doctrinal provisions where the official constitutional doctrine is modified) constitutes grounds for the subjects specified in Article 106 of the Constitution to apply to the Constitutional Court with a new petition requesting an investigation into whether such a law (part thereof) is in conflict with the Constitution (another higher-ranking legal act) whose compliance with the Constitution (another higher-ranking legal act) has already been investigated on the merits, or with such a petition that is analogous to a petition previously presented by a certain subject requesting an investigation into whether such a legal act (part thereof) is in conflict with the Constitution (another higher-ranking legal act) on which the Constitutional Court has already passed the decision to refuse to consider such a petition or the decision (ruling) to dismiss the instituted legal proceedings (case) (if the respective petition was received at the Constitutional Court and the preparation of the constitutional justice case for the hearing of the Constitutional Court began or if the respective petition has already been considered at the hearing of the Constitutional Court), thus, where the Constitutional Court did not decide the respective question on the merits.

As such, the change (reinterpretation, modification) of the constitutional doctrine formed by the Constitutional Court previously does not constitute grounds for the subjects specified in Article 106 of the Constitution to apply to the Constitutional Court with a new inquiry whether there were the violations of election laws during the elections of the President of the Republic or the elections of the members of the Seimas, whether the state of health of the President of the Republic allows him/her to continue to hold office, whether the international treaties of the Republic of Lithuania are in conflict with the Constitution, and whether the concrete actions of the members of the Seimas and state officials against whom an impeachment case has been instituted are in conflict with the Constitution.

The Constitutional Court does not have the powers to assess the inaction of law-making subjects (non-adoption of law-making decisions)

The Constitutional Court's decision of 8 August 2006

… under Paragraphs 1 and 2 of Article 105 of the Constitution, the Constitutional Court investigates whether namely legal acts as such adopted by state institutions (Seimas, the President of the Republic, or the Government) are in conflict with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution, but it does not investigate the non-adoption of law-making decisions by the said state institutions, i.e. the avoidance of or delay in adopting such decisions, as well as the failure to act that is determined by other motives.

The possibility of impugning, from a different aspect, a legal act whose compliance with the Constitution has already been investigated

The Constitutional Court's decision of 13 November 2006

… as it was held by the Constitutional Court in its ruling of 28 March 2006, "none of the grounds for the refusal to investigate a petition … may be interpreted as creating the legal preconditions for a court that considers a case to apply such a law or another legal act (part thereof) the compliance of which with the Constitution (another higher-ranking legal act) is doubtful for the said court".

Thus, the fact that there are no legal grounds for applying to the Constitutional Court from the aspect pointed out by … [the petitioner] so that it would once again investigate the compliance of the legal regulation … with the Constitution, since … courts already do not have any doubts as regards the constitutionality of the said legal regulation, does not at all mean that [the constitutionality of the said legal regulation] may not be impugned before the Constitutional Court from other aspects, i.e. those aspects from which [this] legal regulation … is not identical with that … the compliance of which … has been investigated at the Constitutional Court …

The Constitutional Court does not decide issues concerning the compatibility of legal acts of the same legal force

The Constitutional Court's decision of 13 November 2006

Under the Constitution, the Constitutional Court does not decide issues concerning the compatibility of legal acts of the same legal force or concerning competing legal acts of the same legal force (decision of 29 September 1999). If laws contain obscurities, ambiguities, or gaps, the legislature is under the duty to remove them (decision of 23 September 2002).

If the Constitutional Court is requested to solve an issue concerning the compatibility of legal acts of the same legal force or concerning competing legal acts of the same legal force, such a request is not within the jurisdiction of the Constitutional Court. …

On the other hand, this does not at all mean that, in certain cases, the incompatibility of legal acts (parts thereof) cannot imply the conflict of such legal acts (or some of them) with the Constitution, nor does this mean that, under certain circumstances, the Constitutional Court may not state the existence of such a conflict with the Constitution.

A fictitious petition is not within the jurisdiction of the Constitutional Court

The Constitutional Court's decision of 14 October 2008

In its decision of 31 January 2007, the Constitutional Court held that, in cases where a petition is substantiated not with the reasoning that is explicitly indicated by the petitioner and where such a petition is a fictitious one, in this regard the petition "should be regarded as not falling within the jurisdiction of the Constitutional Court and may not be accepted for consideration at the Constitutional Court".

The Constitutional Court does not assess the compliance of legal acts passed by minsters with the Constitution and laws

The Constitutional Court's ruling of 2 September 2009

According to Article 105 of the Constitution, the Constitutional Court considers and adopts decisions on whether the laws and other acts adopted by the Seimas are in conflict with the Constitution (Paragraph 1) and whether the acts of the President of the Republic and the acts of the Government are in conflict with the Constitution and laws (Paragraph 2).

Assessing the compliance of legal acts passed by ministers … with the Constitution and/or laws does not fall under the competence of the Constitutional Court.

However, in its decision of 20 September 2005, the Constitutional Court held that, under the Constitution, such legal situations are impermissible where it would not be possible to verify in a court whether legal acts (parts thereof), *inter alia*, legal acts passed by ministers, other lower-ranking legal acts, as well as legal acts issued by municipalities, the control of which as regards their compliance with the Constitution does not fall within the jurisdiction of the Constitutional Court, are in conflict with the Constitution and laws.

In its ruling of 24 October 2007, the Constitutional Court held that, at present, such a legal regulation is established [by means of] laws whereby a decision on the compliance of legal acts passed by other law-making subjects (thus, not those passed by the Seimas, the President of the Republic, or the Government and not those adopted by referendum) with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution, is assigned to the jurisdiction of administrative courts; if an administrative court rules such a legal act to be in conflict with the Constitution (another higher-ranking legal act), then, under the Constitution and laws, such a decision of the said court has *erga omnes* impact on the whole practice of the application of the respective legal acts (parts thereof).

Thus, assessing the compliance of legal acts passed by ministers with the Constitution and/or laws is within the jurisdiction of a competent administrative court. This court is bound by the doctrinal provisions of the Constitutional Court …

The Constitutional Court does not decide issues concerning the compatibility of legal acts of the same legal force

The Constitutional Court's decision of 16 November 2010 (petition no 1B-125/2010)

The Constitutional Court has held that, under the Constitution, the Constitutional Court does not consider whether a law is in compliance with another law (rulings of 2 April 2001 and 4 March 2003); it does not decide issues concerning the compatibility of legal acts of the same legal force or concerning competing legal acts of the same legal force (decision of 29 September 1999). If the Constitutional Court is requested to solve an issue concerning the compatibility of legal acts of the same legal force or concerning competing legal acts of the same legal force, such a request is not within the jurisdiction of the Constitutional Court (decision of 6 September 2007).

The Constitutional Court has also held that the removal of collisions is the prerogative of the legislature (ruling of 18 November 1994). If laws contain obscurities, ambiguities, or gaps, the legislature is under the duty to remove them (decisions of 23 September 2002 and 13 November 2006).

The Constitutional Court does not decide issues of the application of law

The Constitutional Court's decision of 16 November 2010 (petition no 1B-125/2010)

Under the Constitution, the Constitutional Court does not decide issues of the application of law; such issues are decided by an institution that has the powers to apply legal acts; if laws contain obscurities, ambiguities, or gaps, the legislature is under the duty to remove them (decisions of 23 September 2002, 13 November 2006, 20 November 2006, and 27 June 2007). The Constitutional Court has also held that such questions of the application of law that have not been decided by the legislature are a matter of judicial practice (ruling of 9 July 1998 and the decision of 20 November 2006); thus, such questions of the

application of law that have not been decided by the legislature may be decided by courts when they consider disputes regarding the application of the respective legal acts (parts thereof) (decision of 20 November 2006). Petitions requesting the interpretation as to how the provisions of a law (or another legal act) must be applied do not fall under the jurisdiction of the Constitutional Court (decisions of 23 September 2002 and 20 November 2006).

The Constitutional Court has also held that the interpretation of the essence of a legal norm is the duty of a law-applying state institution (decision of 11 July 1994).

A petition that is an objective in itself must be regarded as not falling under the jurisdiction of the Constitutional Court

The Constitutional Court's decision of 27 August 2013

… A petition for an investigation into the compliance of a legal act with the Constitution where such a petition is an objective in itself should be regarded as not within the jurisdiction of the Constitutional Court.

The Constitutional Court does not investigate the compliance of legal acts adopted by the Government with the provisions of the programme of the Government

The Constitutional Court's ruling of 6 November 2013

… the supervision of the implementation of the programme of the Government is not within the jurisdiction of the Constitutional Court and the compliance of government acts with any programmatic provisions consolidated in the programme of the Government is not a matter of constitutional review.

The Constitutional Court does not investigate the compliance of an international treaty with a law

The Constitutional Court's decision of 4 November 2014

… under the Constitution … the Constitutional Court presents conclusions on whether the international treaties of the Republic of Lithuania are in conflict with the Constitution. Thus, it should be held that the issue of the consideration whether an international treaty is in compliance with a law is not within the jurisdiction of the Constitutional Court.

The Constitutional Court does not assess the expediency of the adoption of legal acts

The Constitutional Court's decision (no KT24-S13/2016) of 29 August 2016

… the Constitutional Court does not exercise constitutional control over legal acts from the aspect of the expediency of their adoption …

The Constitutional Court does not investigate the compliance of a decision entered in the minutes of a meeting of the Government with the Constitution and laws

The Constitutional Court's ruling of 2 March 2018

… under Paragraph 1 of Article 102 and Item 2 of Paragraph 2 of Article 105 of the Constitution, the Constitutional Court decides whether the acts of the Government are in conflict with the Constitution or laws. Therefore, a decision that is entered in the minutes of a meeting of the Government and is not an act of the Government is not, under the Constitution, a matter for investigation by the Constitutional Court.

The Constitutional Court does not decide whether court decisions are in conflict with the Constitution and/or laws and does not have the powers to review cases decided by courts and to overturn (change) court decisions

The Constitutional Court's decision (no KT27-A-S16/2019) of 9 October 2019

Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution provides that every person has the right to apply to the Constitutional Court concerning the legal acts specified in Paragraphs 1 and 2

of Article 105 of the Constitution if a decision adopted on the basis of these acts has violated the constitutional rights or freedoms of the person and the person has exhausted all legal remedies.

Thus, under the Constitution, a person has the right to apply to the Constitutional Court regarding the compliance of not all acts with the Constitution and/or laws, but only those specified in Paragraphs 1 and 2 of Article 105 of the Constitution. Paragraph 1 of Article 105 of the Constitution consolidates that the Constitutional Court considers and adopts decisions on whether the laws of the Republic of Lithuania or other acts adopted by the Seimas are in conflict with the Constitution of the Republic of Lithuania; Paragraph 2 of this article establishes that the Constitutional Court also decides whether the acts of the President of the Republic and the acts of the Government of the Republic are in conflict with the Constitution and laws.

In view of this, it should be noted that, under the Constitution, the Constitutional Court does not decide whether court decisions are in conflict with the Constitution and/or laws and it does not have the powers to review cases decided by courts and to overturn (change) court decisions. Such petitions do not fall within the jurisdiction of the Constitutional Court.

The Constitutional Court does not decide, following the petitions of persons referred to in Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution, on the compliance of the actions of members of the Seimas, state officials, judges, or state servants with the Constitution and does not assess actions or failure to act by state and municipal institutions or establishments or judicial self-governance institutions

The Constitutional Court's decision (no KT28-A-S17/2019) of 9 October 2019

… the Constitutional Court does not decide, following the petitions of persons referred to in Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution, on the compliance of the actions of members of the Seimas, state officials, judges, or state servants with the Constitution and does not assess actions or failure to act by state and municipal institutions or establishments or judicial self-governance institutions. Such petitions do not fall within the jurisdiction of the Constitutional Court.

A petition in which a matter for investigation is absent does not fall within the jurisdiction of the Constitutional Court

The Constitutional Court's decision (no KT28-A-S17/2019) of 9 October 2019

The Constitutional Court has noted on more than one occasion that the fact that a matter for investigation is absent in a petition means that the petition does not fall within the jurisdiction of the Constitutional Court (*inter alia*, the rulings of 20 March 2008, 20 November 2013, 16 December 2013, and 3 July 2014).

The petition of a person referred to in Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution should be regarded as not falling within the jurisdiction of the Constitutional Court if the adopted final and non-appealable court decision with respect to this person came into force before 1 May 2019

The Constitutional Court's decision no KT29-A-S18/2019 of 10 October 2019

Under Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution, every person has the right to apply to the Constitutional Court concerning the legal acts specified in Paragraphs 1 and 2 of Article 105 of the Constitution if a decision adopted on the basis of these acts has violated the constitutional rights or freedoms of the person and the person has exhausted all legal remedies; the procedure for the implementation of this right is established by the Law on the Constitutional Court of the Republic of Lithuania.

Paragraph 2 of Article 65 (wording of 16 July 2019) of the Law on the Constitutional Court provides that a person has the right to file a petition with the Constitutional Court for an investigation into the compliance of laws or other acts of the Seimas, the acts of the President of the Republic, or the acts of the Government with the Constitution or laws if: (1) a decision adopted on the basis of these acts has violated

the constitutional rights or freedoms of the person, and (2) the person has exhausted all remedies provided for by law for defending constitutional rights or freedoms, including the right to apply to a court, and, after all possibilities established by law for filing a complaint against the decision of the court have been exhausted, the final and non-appealable decision is adopted by the court, and (3) not more than four months have passed from the day that the court decision referred to in Item 2 of this paragraph came into force.

… the Law Amending Articles 106 and 107 of the Constitution, which consolidated, in Paragraph 4 of Article 106 of the Constitution, the right of every person to apply to the Constitutional Court, came into force on 1 September 2019.

It should also be noted that the universally recognised general legal principle of *lex retro non agit* is applicable in the field of legal regulation, i.e. the effect of legal acts is prospective and they have no retroactive effect. The Constitutional Court has noted on more than one occasion that this principle is important and necessary in ensuring: the stability and strength of law, laws, and the legal order; the rights of the subjects involved in legal relationships; and trust in legal acts adopted in the state; the said principle is an important precondition for legal certainty and it is an essential element of the rule of law and of a state under the rule of law (*inter alia*, the decision of 25 March 1998, the ruling of 11 January 2001, and the decision of 22 March 2018).

Consequently, under Paragraph 4 of Article 106 of the Constitution, as of 1 September 2019, persons acquired the right to apply to the Constitutional Court in accordance with the procedure laid down in the Law on the Constitutional Court, *inter alia*, within the time limit laid down in Item 3 of Paragraph 2 of Article 65 of this law, i.e. within four months of the date on which the final and non-appealable decision of the court came into force. Thus, the constitutional right to apply to the Constitutional Court concerning the acts specified in Paragraphs 1 and 2 of Article 105 of the Constitution was acquired as of 1 September 2019 only by those persons with respect to whom the final and non-appealable decision of the court in the case concerning the violation of their constitutional rights and freedoms came into force on 1 May 2019 and later.

In view of the above, it should be held that, under the Constitution, the petitions of persons referred to in Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution do not fall within the jurisdiction of the Constitutional Court if the adopted final and non-appealable court decision with respect to these persons came into force before 1 May 2019.

The Constitutional Court does not have the powers to consider petitions requesting the renewal of proceedings before the courts of general competence and administrative courts

The Constitutional Court's decision (no KT45-A-S32/2019) of 12 November 2019

… under the Constitution, the Constitutional Court also does not have the powers to consider petitions requesting the renewal of proceedings before the courts of general competence and administrative courts. Petitions requesting a decision on such issues do not fall within the jurisdiction of the Constitutional Court.

The Constitutional Court does not have the powers to assess the compliance of legal acts issued by ministers and of other lower-ranking acts with the Constitution and/or laws

The Constitutional Court's decision (no KT46-A-S33/2019) of 13 November 2019

As held by the Constitutional Court on more than one occasion, under the Constitution, the Constitutional Court does not have the powers to assess the compliance of legal acts issued by ministers and other lower-ranking acts with the Constitution and/or laws (decisions of 9 November 1999 and 20 September 2005) … . Petitions requesting a decision on such issues do not fall within the jurisdiction of the Constitutional Court.

The Constitutional Court does not have the powers to investigate the compliance of a factual situation with the Constitution

The Constitutional Court's decision (no KT50-A-S37/2019) of 20 November 2019

As noted by the Constitutional Court, under Paragraph 1 of Article 102 and Article 105 of the Constitution, the Constitutional Court does not have the powers to investigate the compliance of a factual situation with the Constitution. The Constitutional Court administers constitutional justice by investigating whether laws and other acts of the Seimas, the acts of the President of the Republic, and the acts of the Government are in conflict with the Constitution (decision of 20 October 2017).

The Constitutional Court does not have the powers to deal with matters assigned to the competence of other institutions

The Constitutional Court's decision (no KT51-A-S38/2019) of 20 November 2019

… under the Constitution, the Constitutional Court does not have the powers to deal with matters assigned to the competence of other institutions. Petitions requesting a decision on such issues do not fall within the jurisdiction of the Constitutional Court.

The Constitutional Court does not have the powers to assess the compliance of acts adopted by institutions other than the Seimas, the President of the Republic, or the Government with the Constitution and/or laws

The Constitutional Court's decision (no KT61-A-S47/2019) of 11 December 2019

… under the Constitution, the assessment of the compliance of acts adopted by institutions other than the Seimas, the President of the Republic, or the Government with the Constitution and/or laws is not assigned to the competence of the Constitutional Court. … Petitions requesting a decision on such issues do not fall within the jurisdiction of the Constitutional Court.

Petitions requesting an investigation into the compliance of certain provisions of the Constitution with other provisions of the Constitution do not fall within the jurisdiction of the Constitutional Court

The Constitutional Court's decision (no KT63-A-S58/2020) of 1 April 2020

As held by the Constitutional Court, the provisions of the Constitution form a single coherent system; no provision of the Constitution may be opposed to other provisions of the Constitution; the nature of the Constitution as the highest-ranking legal act and the idea of constitutionality imply that the Constitution may not and does not contain any gaps or internal contradictions (rulings of 25 May 2004, 13 December 2004, and 24 January 2014).

Consequently, the petitions in which petitioners raise doubts concerning the conflict of certain provisions of the Constitution with other provisions of the Constitution may not be investigated.

In view of the above, it should be held that there is no matter for investigation in this part of the petition of the petitioner. The Constitutional Court has noted more than once that the fact that a matter for investigation is absent in a petition means that the petition does not fall within the jurisdiction of the Constitutional Court (*inter alia*, the decision (no KT28-A-S17/2019) of 9 October 2019 and the decision (no KT55-A-S50/2020) of 25 March 2020).

Petitions requesting an investigation into the compliance of the laws and other legal acts of the Republic of Lithuania with the norms of European Union law do not fall within the jurisdiction of the Constitutional Court

The Constitutional Court's decision (no KT70-A-S65/2020) of 8 April 2020

… Article 2 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union provides that the norms of European Union law are a constituent part of the legal system of the Republic of Lithuania. Where it concerns the founding Treaties of the European Union, the norms of European Union law are applied directly, while in the event of the collision of legal norms, they have supremacy over the laws and other legal acts of the Republic of Lithuania.

The Constitutional Court has held that the Constitution *expressis verbis* establishes the rule of collision with respect to EU law, by consolidating the priority of the application of EU legal acts in cases where the provisions of EU law arising from the founding Treaties of the European Union compete with the legal regulation established in Lithuanian national legal acts (regardless of their legal force), with the exception of the Constitution itself (*inter alia*, the ruling of 14 March 2006, the decision of 8 May 2007, and the ruling of 4 December 2008).

In view of the above, it should be held that collision between the laws and other legal acts of the Republic of Lithuania and the norms of EU law is an issue of the application of law.

The Constitutional Court has held on more than one occasion that, under the Constitution, it does not decide questions on the application of law (*inter alia*, the decisions of 20 November 2006 and 9 May 2016 and the decision (no KT61-A-S56/2020) of 1 April 2020). Petitions requesting a decision on such issues do not fall within the jurisdiction of the Constitutional Court.

In implementing the constitutional right to apply to the Constitutional Court, a person must act in good faith and must not abuse this right

The Constitutional Court's decision (no KT83-A-S78/2020) of 29 April 2020

In its ruling of 25 November 2019, the Constitutional Court noted that, as of 1 September 2019, the Law Amending Articles 106 and 107 of the Constitution consolidated the institution of individual constitutional complaints in the Constitution: in defence of constitutional rights or freedoms, every person has the right to apply to the Constitutional Court requesting it to investigate whether legal acts whose review falls within the competence of the Constitutional Court are in compliance with the Constitution (another higher-ranking act) if a decision adopted on the basis of these legal acts has possibly violated the constitutional rights or freedoms of the person; the institution of individual constitutional complaints in the Constitution is not an objective in itself; it is aimed at enabling the effective protection of those constitutional rights or freedoms of a person that could be violated by a decision adopted on the basis of legal acts (parts thereof) contrary to the Constitution.

The Constitutional Court has also held that, under the Constitution, the subjects involved in legal relationships are under the duty to act in good faith and without violating law; this is required by the general legal principle of *bona fides*, which is inseparable from the constitutional principle of a state under the rule of law (*inter alia*, the rulings of 27 June 2007, 11 December 2013, and 6 February 2020); persons who believe that their constitutional rights or freedoms have been violated not only have the right to defend them but, having decided to exercise this right, have the duty to do so in good faith (decision (no KT17-A-S17/2020) of 5 February 2020 and decisions (nos KT66-A-S61/2020 and KT69-A-S64/2020) of 8 April 2020).

Consequently, the Constitution requires that every person, when implementing the constitutional right to apply to the Constitutional Court for an investigation into whether legal acts whose review falls within the competence of the Constitutional Court are in compliance with the Constitution (another higher-ranking act) if a decision adopted on the basis of these legal acts has possibly violated the constitutional rights or freedoms of the person, must act in good faith and must not abuse the constitutional right to apply to the Constitutional Court.

The abuse of procedural rights

The Constitutional Court's decision (no KT83-A-S78/2020) of 29 April 2020

… the conduct of petitioners in cases where, while being obliged to be aware of the obvious inadmissibility of their petition (petitions) and the pointlessness of the consideration of their petition (petitions) at the Constitutional Court, they apply to the Constitutional Court with such a petition (petitions) is incompatible with the exercise of their constitutional right to apply to the Constitutional Court in good faith, nor with the aims of the administration of constitutional justice; therefore, such

implementation of the constitutional right to apply to the Constitutional Court not according to the intended purpose should be considered to be the abuse of procedural rights, which is prohibited under the Constitution.

Petitions containing requests for legal advice do not fall within the jurisdiction of the Constitutional Court

The Constitutional Court's decision (no KT85-A-S80/2020) of 29 April 2020

… as the Constitutional Court has held on more than one occasion, under the Law on the Constitutional Court, the Constitutional Court gives legal advice neither to the persons that participated in the case nor to any other persons (*inter alia*, the decisions of 6 April 2004, 27 August 2014, 13 January 2016, and 5 September 2019). Such petitions requesting legal advice do not fall within the jurisdiction of the Constitutional Court.

Persons referred to in Paragraph 4 (wording of 21 March 2019) of Article 106 of the Constitution do not have the right to apply to the Constitutional Court with petitions containing general requests

The Constitutional Court's decision (no KT116-A-S108/2020) of 2 July 2020

… under the Constitution, persons referred to in Paragraph 4 (wording of 21 March 2019) of Article 106 thereof do not have the right to apply to the Constitutional Court with petitions containing general requests to investigate the constitutionality of legal acts whose review falls within the competence of the Constitutional Court (decision (no KT19-A-S19/2020) of 5 February 2020 and the decision (no KT84-A-S79/2020) of 29 April 2020).

Petitions whereby the right to apply to the Constitutional Court is abused do not fall within the jurisdiction of the Constitutional Court

The Constitutional Court's decision (no KT132-A-S123/2020) of 23 July 2020

… a petition whereby the right of a person to apply to the Constitutional Court is abused does not fall within the jurisdiction of the Constitutional Court.

8.5. ACTS ADOPTED BY THE CONSTITUTIONAL COURT

8.5.1. The concept and types of final acts adopted by the Constitutional Court

The concept of final acts adopted by the Constitutional Court (Paragraph 2 of Article 107 of the Constitution)

The Constitutional Court's ruling of 28 March 2006

Paragraph 2 of Article 107 of the Constitution provides that the decisions of the Constitutional Court on the issues assigned to its competence by the Constitution are final and not subject to appeal.

The notion "decisions" used in Paragraph 2 of Article 107 of the Constitution (the same notion is used in Paragraph 1 of Article 105, Paragraph 2 of Article 107, and Paragraph 4 of Article 109 of the Constitution) must not be interpreted as meaning that the Constitutional Court, while deciding on the issues assigned to its competence, may adopt only a legal act called a decision (which has the form of a decision). The notion "decisions" is a general one; this notion not only describes legal acts adopted by the Constitutional Court and the types of these acts, but also means that the Constitutional Court implements the competence assigned to it by the Constitution and expresses its will, i.e. adopts a final act of the Constitutional Court.

It needs to be noted that final acts adopted by the Constitutional Court are also such its legal acts by which a constitutional justice case is considered on the merits, as well as such that are adopted without investigating on the merits the compliance of an impugned legal act (part thereof) with the Constitution (another higher-ranking legal act), but by properly (clearly and rationally) refusing by means of a reasoned decision to consider a petition or by dismissing instituted legal proceedings (if the respective petition is

received at the Constitutional Court and the preparation of a constitutional justice case for a hearing at the Constitutional Court has begun) or by dismissing a case (if the respective constitutional justice case has already been considered in a hearing at the Constitutional Court).

The general notion "decisions" of Paragraph 2 of Article 107 of the Constitution is concretised in the Law on the Constitutional Court.

… the Law on the Constitutional Court, *inter alia*, prescribes: the Constitutional Court decides cases on their merits by issuing rulings … the rulings of the Constitutional Court are pronounced in the name of the Republic of Lithuania … in the cases provided for by the Law on the Constitutional Court (i.e. the cases provided for in Paragraph 3 of Article 105 of the Constitution), a final act adopted by the Constitutional Court is called a conclusion … the Constitutional Court adopts decisions on individual questions that prevent a case from being decided on its merits … . Thus, after it investigates whether a certain act of the Seimas, the President of the Republic, or the Government or any act (part thereof) passed by referendum is in conflict with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, the Constitutional Court adopts a ruling.

In this context, it should be noted that, under the Law on the Constitutional Court, the Constitutional Court adopts decisions regarding the interpretation of a ruling of the Constitutional Court … and regarding the dismissal of a case (legal proceedings) …

The specified rulings, conclusions, and decisions of the Constitutional Court are final acts of the Constitutional Court – by means of such acts, a constitutional justice case is completed. All the said rulings, conclusions, and decisions of the Constitutional Court by which a constitutional justice case is completed, i.e. all final acts of the Constitutional Court, are included in the general notion "decisions" used in Paragraph 2 of Article 107 of the Constitution, which also means that the Constitutional Court implements the competence assigned to it by the Constitution and expresses its will, i.e. adopts a final act of the Constitutional Court.

8.5.2. The legal force of acts adopted by the Constitutional Court

The legal force of acts adopted by the Constitutional Court (Paragraphs 1 and 2 of Article 107 of the Constitution)

The Constitutional Court's ruling of 30 May 2003

Paragraphs 1 and 2 of Article 107 of the Constitution prescribe:

"A law (or part thereof) of the Republic of Lithuania or another act (or part thereof) of the Seimas, an act of the President of the Republic, or an act (or part thereof) of the Government may not be applied from the day of the official publication of the decision of the Constitutional Court that the act in question (or part thereof) is in conflict with the Constitution of the Republic of Lithuania.

The decisions of the Constitutional Court on the issues assigned to its competence by the Constitution shall be final and not subject to appeal."

Thus, under the Constitution, after the Constitutional Court recognises a law (part thereof), or another act (part thereof) of the Seimas, an act of the President of the Republic, an act (part thereof) of the Government to be in conflict with the Constitution, the institutions that issued the respective act – the Seimas, the President of the Republic, or the Government – are prohibited from repeatedly establishing any such a legal regulation that has been recognised to be in conflict with the Constitution, by adopting certain laws or other legal acts afterwards. The legal regulation established in Paragraphs 1 and 2 of Article 107 of the Constitution also means that the legal force of a decision (ruling) of the Constitutional Court may not be overcome by means of the repeated adoption of laws or other acts of the Seimas, acts of the President of the Republic, or acts of the Government.

[…]

In view of the fact that all constituent parts of a ruling of the Constitutional Court are interrelated and constitute a single whole, that a ruling of the Constitutional Court must state the arguments upon which that

ruling of the Constitutional Court is based and present the concept of the provisions of the Constitution, the institutions that adopt laws and other legal acts – the Seimas, the President of the Republic, and the Government – while adopting new laws or legal acts, amending and supplementing already adopted laws or other legal acts, are bound by the concept of the provisions of the Constitution and other legal arguments that are presented in the reasoning of that ruling of the Constitutional Court.

The legal force of rulings adopted by the Constitutional Court (Paragraph 1 of Article 107 of the Constitution)

The Constitutional Court's ruling of 30 December 2003

The provision of Paragraph 1 of Article 107 of the Constitution, whereby a legal act (or part thereof) may not be applied from the day of the official publication of the decision of the Constitutional Court that the act in question (or part thereof) is in conflict with the Constitution, means that, as long as the Constitutional Court has not adopted a decision that the act in question (or part thereof) is in conflict with the Constitution, it is presumed that such a legal act (part thereof) is in compliance with the Constitution and that the legal effects that have emerged on the basis of the act in question (part thereof) are legitimate.

Thus, the general rule has been established in Paragraph 1 of Article 107 of the Constitution that the legal force of decisions adopted by the Constitutional Court is prospective. However, this rule is not absolute.

The legal force of a conclusion presented by the Constitutional Court (Item 4 of Paragraph 3 of Article 105 and Paragraphs 2 and 3 of Article 107 of the Constitution)

The Constitutional Court's conclusion of 31 March 2004

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

[…]

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

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

[…]

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

[…]

… If the grounds for impeachment are a gross violation of the Constitution, the Seimas may decide the issue of the removal of the President of the Republic from office only after receiving the conclusion of the Constitutional Court that the President of the Republic grossly violated the Constitution. This is the constitutional guarantee for the President of the Republic that constitutional responsibility will not be applied against him/her unreasonably.

The legal force of a conclusion presented by the Constitutional Court

The Constitutional Court’s ruling of 25 May 2004

… the conclusion of the Constitutional Court that a person has grossly violated the Constitution (and, thus, has breached the oath) is final. No other state institution, no other state official, and no other subject may change or revoke such a conclusion of the Constitutional Court. Under the Constitution, such a conclusion may not be changed or revoked by referendum, by election, or in any other way.

The legal force of acts adopted by the Constitutional Court (Paragraph 2 of Article 107 of the Constitution)

The Constitutional Court’s decision of 20 September 2005

Paragraph 2 of Article 107 of the Constitution provides that the decisions of the Constitutional Court on the issues assigned to its competence by the Constitution are final and not subject to appeal.

[…]

The provisions of the Constitution – its norms and principles – are interpreted in the acts of the Constitutional Court. The official constitutional doctrine is created and developed in such acts. All law-making subjects and all law-applying subjects, including courts, must pay regard to the official constitutional doctrine when they apply the Constitution; they may not interpret the provisions of the Constitution differently from how the Constitutional Court interpreted the said provisions in its acts. Otherwise, the constitutional principle that only the Constitutional Court enjoys the powers to officially interpret the Constitution would be violated, the supremacy of the Constitution would be disregarded, and the preconditions would be created for the emergence of incompatibilities in the legal system.

Every ruling of the Constitutional Court constitutes a single whole, and all its constituent parts are interrelated; while adopting new laws or legal acts, amending and supplementing already adopted laws or other legal acts, state institutions that pass such acts are bound both by the concept of the provisions of the Constitution and by other legal arguments that are presented in the reasoning of the respective ruling adopted by the Constitutional Court (rulings of 30 May 2003 and 19 January 2005).

It needs to be emphasised that law-making institutions (officials) and law-applying institutions (officials) are bound by the concept of constitutional provisions and by arguments set out not only in the rulings of the Constitutional Court, but also in other acts of the Constitutional Court, i.e. its conclusions and decisions. Thus, under the Constitution, the content of all acts of the Constitutional Court in which the Constitution is interpreted, i.e. the official constitutional doctrine is formulated, is also binding on law-making institutions (officials) and law-applying institutions, including courts of general jurisdiction and specialised courts.

The *erga omnes* model of constitutional control

The Constitutional Court's ruling of 28 March 2006

Paragraph 1 of Article 107 of the Constitution provides that a law (or part thereof) or another act (or part thereof) of the Seimas, an act of the President of the Republic, or an act (or part thereof) of the Government may not be applied from the day of the official publication of the decision of the Constitutional Court that the act in question (or part thereof) is in conflict with the Constitution. Thus, the *erga omnes* model of constitutional control is consolidated in the Constitution.

The legal force of acts adopted by the Constitutional Court (Paragraphs 1 and 2 of Article 107 of the Constitution)

The Constitutional Court's ruling of 28 March 2006

… the phrase "shall be final and not subject to appeal" of Paragraph 2 of Article 107 of the Constitution, which … prescribes that the decisions of the Constitutional Court on the issues assigned to its competence by the Constitution are final and not subject to appeal, means that rulings, conclusions, or decisions of the Constitutional Court by which a constitutional justice case is completed, i.e. final acts of the Constitutional Court, are obligatory for all state institutions, courts, all enterprises, establishments, and organisations, as well as officials and citizens, including the Constitutional Court itself: final acts of the Constitutional Court are obligatory for the Constitutional Court itself and they restrict the Constitutional Court from the aspect that it may not change them or review them if there are no constitutional grounds for doing so.

[…]

No amendments or supplements to a higher-ranking legal act (including the Constitution) made after the Constitutional Court declared, when referring to the previous provisions of the Constitution, a certain legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government, or adopted by referendum to be in conflict with a certain higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, may reinstate the legal act (part thereof) that was declared to be in conflict with a certain higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, in the Lithuanian legal system. Under the Constitution, the Constitutional Court does not have the powers to reinstate such legal acts (parts thereof) in the Lithuanian legal system, either. …

[…]

… the Constitution does not give any grounds for reinstating retroactively a legal act (part thereof) that has been declared in conflict with a certain higher-ranking legal regulation, *inter alia* (and, first of all), with one established in the Constitution, in the Lithuanian legal system, or for questioning and annulling the respective rulings, conclusions, or decisions of the Constitutional Court that were constitutionally justifiable at the moment when they were adopted. A different interpretation would result in the disregard of not only the provisions of the Constitution that consolidate the institution of constitutional justice – constitutional judicial control – *inter alia*, the fact that the decisions of the Constitutional Court are final and not subject to appeal, but also would lead to the denial of the stability of the Constitution, the predictability of decisions adopted by the Constitutional Court, and the legitimate expectations of various legal subjects where the said expectations are created by the aforementioned decisions.

The legal position of the Constitutional Court has the power of precedent

The Constitutional Court's ruling of 22 October 2007

… the legal position *(ratio decidendi)* of the Constitutional Court has the power of precedent in the respective constitutional justice cases.

The legal force of rulings adopted by the Constitutional Court; the duty of law-making subjects to modify a legal regulation declared to be in conflict with a higher-ranking legal act (Article 107 of the Constitution)

The Constitutional Court's decision of 1 February 2008

Paragraph 1 of Article 107 of the Constitution provides that a law (or part thereof) of the Republic of Lithuania or another act (or part thereof) of the Seimas, an act of the President of the Republic, or an act (or part thereof) of the Government may not be applied from the day of the official publication of the decision of the Constitutional Court that the act in question (or part thereof) is in conflict with the Constitution (Paragraph 1); the decisions of the Constitutional Court on the issues assigned to its competence by the Constitution are final and not subject to appeal (Paragraph 2). Thus, every legal act (or part thereof) passed by the Seimas, the President of the Republic, or the Government, or adopted by referendum, which is declared in conflict with any higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, is removed from the Lithuanian legal system for good, as it may never be applied anymore (rulings of 28 March 2006 and 6 June 2006 and the decision of 8 August 2006); thus, the respective law-making subject – the Seimas, the President of the Republic, or the Government – is under the constitutional duty to recognise such a legal act (part thereof) no longer valid or, if it is impossible to do without the respective legal regulation of the social relationships in question, to amend it so that the newly established legal regulation would not be in conflict with higher-ranking legal acts, *inter alia* (and, first of all), the Constitution; but even until this constitutional duty is carried out, the respective legal act (part thereof) may not be applied under any circumstances; in this respect, the legal force of such a legal act is abolished (decision of 8 August 2006).

When new laws are adopted, amended and/or already adopted laws and legal acts are supplemented (also when new legal regulation is established in order to meet the requirements of the Constitution, or when the existing legal regulation is modified in order to harmonise it with the Constitution), all law-making subjects are bound by the jurisprudence of the Constitutional Court, *inter alia*, by the official constitutional doctrine formed therein (in the reasoning parts of acts adopted by the Constitutional Court), i.e. by the official concept (official interpretation) of provisions (norms and principles) of the Constitution, as well as by other legal arguments set out in acts adopted the Constitutional Court (ruling of 30 May 2003, the decision of 20 September 2005, the rulings of 14 March 2006, 28 March 2006, 9 May 2006, and 6 June 2006 and the decision of 8 August 2006). Such legal acts passed by the Seimas, the President of the Republic, or the Government or those adopted by referendum that establish a new (different) legal regulation instead of the legal regulation ruled by the Constitutional Court to be in conflict with the Constitution or that declare legal acts (parts thereof) that are in conflict with the Constitution to be no longer valid may be challenged at the Constitutional Court in accordance with the established procedure (decision of 8 August 2006).

After the entry into effect of a ruling of the Constitutional Court that has declared a legal act (part thereof) to be in conflict with the Constitution, there might appear various indeterminacies in the legal system, *lacunae legis* – gaps in the legal regulation, or even a vacuum; in order to avoid this, the legal regulation should be modified in such a manner that gaps in the legal regulation and other indeterminacies would be removed and that the legal regulation would be clear and harmonious (rulings of 19 January 2005 and 23 August 2005 and the decision of 8 August 2006). The Constitution does not tolerate any such a situation where the respective law-making subject avoids or delays the adoption of such legal acts that, while following the official concept of the provisions of the Constitution – the official constitutional doctrine set out in rulings of the Constitutional Court, would modify, as appropriate, the legal regulation that has been ruled to be, by means of a ruling of the Constitutional Court, in conflict with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution; such a situation should especially not be tolerated when a *lacuna legis*, a legal gap, appears in the legal system after the entry into force of a ruling of the Constitutional Court that has ruled a certain legal act (part thereof) in conflict with the Constitution (or another higher-ranking legal act), i.e. when certain social relationships remain legally unregulated, even though, while paying regard to the imperatives of the consistency and inner uniformity of the legal system, which stem from the Constitution, and taking account of the content of these social relationships, the said relationships must be legally regulated (decision of 8 August 2006).

In this context, it needs to be mentioned that legal gaps (including legislative omissions) that are in lower-ranking legal acts may be filled ad hoc when courts within their competence decide cases on an

individual social relationship and when they apply (and interpret) law. Therefore, in cases where, instead of the legal regulation that was declared by the Constitutional Court in conflict with a higher-ranking legal act, *inter alia*, with the Constitution, the respective law-making subject has not passed a legal act (acts) (parts thereof) that would establish a new (different) legal regulation harmonised with the said higher-ranking legal acts, *inter alia*, with the Constitution, courts have the constitutional duty to ensure the rights and freedoms of a person who applies to a court regarding the violation of his/her rights or freedoms, and they must ensure other constitutional values; thus, courts have the powers, which stem from the Constitution, to apply, *inter alia*, the general principles of law, as well as higher-ranking legal acts, and, first of all, the Constitution – supreme law. However, it needs to be emphasised that, when courts exercise these constitutional powers, legal gaps are not removed for good – they are only filled ad hoc; still, this permits the ensuring of the protection of the rights and freedoms of a person who applies to a court regarding the defence of his/her violated rights precisely in that individual social relationship due to which a case is considered in that court (decision of 8 August 2006 and the ruling of 7 June 2007).

The Constitutional Court is bound both by the precedents that it itself has created and by the official constitutional doctrine that substantiates such precedents

The Constitutional Court's ruling of 20 February 2008

It has been held on more than one occasion in acts adopted by the Constitutional Court that the Constitutional Court is bound by precedents that it itself has created (in previous constitutional justice cases) and by the official constitutional doctrine that it itself has formed, which substantiates these precedents; it may be possible to deviate from precedents created by the Constitutional Court while adopting decisions in constitutional justice cases and new precedents may be created only in cases where this is unavoidably and objectively necessary, constitutionally justifiable and reasoned; equally, the official constitutional doctrinal provisions on which precedents of the Constitutional Court are based may not be reinterpreted so that the official constitutional doctrine would be modified unless this is unavoidably and objectively necessary, constitutionally justifiable and reasoned (ruling of 28 March 2006, the decisions of 8 August 2006 and 21 November 2006, the rulings of 22 October 2007 and 24 October 2007, and the decisions of 13 November 2007, 6 December 2007, and 1 February 2008).

The legal meaning of factual circumstances established by the Constitutional Court

The Constitutional Court's ruling of 9 February 2010

Factual circumstances established by the Constitutional Court in previous cases are *res iudicata*; such factual circumstances are not established and proved once again in new cases (conclusion of 31 March 2004).

The right of the legislature to lay down such a legal regulation that would remove negative legal consequences that arose as a result of the application of a legal act declared to be in conflict with the Constitution

The Constitutional Court's ruling of 25 October 2011

In its decision of 13 May 2003, after holding that, under Paragraph 1 of Article 107 of the Constitution, the force of decisions of the Constitutional Court regarding the compliance of legal acts with the Constitution is prospective, the Constitutional Court also noted that, under the Constitution, this does not mean that the legislature may not, on the whole, regulate the relationships occurring prior to the day of the official publication of a decision of the Constitutional Court whereby a law is ruled to be in conflict with the Constitution.

In its ruling of 25 October 2011, the Constitutional Court noted that the Constitution, *inter alia*, the provision of Paragraph 1 of Article 107 thereof, whereby, *inter alia*, an act (or part thereof) of the Seimas may not be applied from the day of the official publication of the decision of the Constitutional Court that the act in question (or part thereof) is in conflict with the Constitution, does not deny the right of the Seimas

to establish such a new legal regulation that would remove negative legal consequences that arise in the course of the application of a legal act (part thereof) that is later declared by the Constitutional Court, by means of its decision, to be in conflict with the Constitution, i.e. also to apply the new legal regulation to relationships that occurred prior to the day when the said decision of the Constitutional Court was officially published. The said legal regulation must pay regard to the Constitution; it may not violate the public interest and must fulfil, *inter alia*, the requirements of the constitutional principle of a state under the rule of law: it may not create any preconditions for denying justice, legal certainty, and legal security, and it must protect any honestly acquired rights of other persons.

The legal force of rulings adopted by the Constitutional Court (Paragraphs 1 and 2 of Article 107 of the Constitution)

The Constitutional Court's decision of 19 November 2012

In its jurisprudence, the Constitutional Court has interpreted the provisions of Article 107 of the Constitution more than once.

Paragraphs 1 and 2 of Article 107 of the Constitution prescribe:

"A law (or part thereof) of the Republic of Lithuania or another act (or part thereof) of the Seimas, an act of the President of the Republic, or an act (or part thereof) of the Government may not be applied from the day of the official publication of the decision of the Constitutional Court that the act in question (or part thereof) is in conflict with the Constitution of the Republic of Lithuania.

The decisions of the Constitutional Court on the issues assigned to its competence by the Constitution shall be final and not subject to appeal."

The Constitutional Court has held on more than one occasion that Paragraph 1 of Article 107 of the Constitution should be interpreted as meaning that every legal act (or part thereof) passed by the Seimas, the President of the Republic, or the Government or adopted by referendum that is declared to be in conflict with any higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, is removed from the Lithuanian legal system for good, as it may never be applied anymore (*inter alia*, the rulings of 28 March 2006, 6 June 2006, 25 October 2011, and 6 February 2012). The Constitutional Court has also held that, while deciding constitutional justice cases subsequent to petitions of petitioners, it has the constitutional powers to annul the legal force of legal acts (parts thereof) if they are in conflict with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution (ruling of 6 June 2006, the decision of 3 May 2010, and the ruling of 25 October 2011).

While interpreting Paragraph 1 of Article 107 of the Constitution, the Constitutional Court has also revealed the content (which arises from the said paragraph) of the presumption of the constitutionality of legal acts and their consequences: the provision of Paragraph 1 of Article 107 of the Constitution, whereby a legal act (or part thereof) may not be applied from the day of the official publication of the decision of the Constitutional Court that the act in question (or part thereof) is in conflict with the Constitution, means that, as long as the Constitutional Court has not adopted the decision that the act in question (or part thereof) is in conflict with the Constitution, it is presumed that such a legal act (part thereof) is in compliance with the Constitution and that legal consequences that arose on the basis of the act in question (part thereof) are legitimate (rulings of 30 December 2003, 22 December 2010, and 25 October 2011).

In its ruling of 30 December 2003, the Constitutional Court held that Paragraph 1 of Article 107 of the Constitution consolidates the general rule that the force of decisions of the Constitutional Court is prospective; however, this rule is not absolute.

Thus, there may be constitutionally justifiable exceptions to the general rule that the force of decisions of the Constitutional Court is prospective, i.e. under the Constitution, in exceptional cases, the force of decisions of the Constitutional Court may also be targeted at the consequences of the application of a legal act declared in conflict with the Constitution where such consequences had arisen before the Constitutional Court adopted the decision that this legal act (part thereof) is in conflict with the Constitution.

It needs to be noted that the exceptions to the general rule established in Paragraph 1 of Article 107 of the Constitution that the legal force of decisions of the Constitutional Court is prospective may be justified by referring to the overall constitutional legal regulation.

The Constitution is an integral act (Paragraph 1 of Article 6 of the Constitution). The Constitutional Court has held more than once that the principles and norms of the Constitution constitute a harmonious system, and that it is not allowed to interpret any provision of the Constitution in a manner that would distort or deny the content of any other constitutional provision, since thus the essence of the entire constitutional regulation would be distorted and the balance of the constitutional values would be disturbed. While invoking such a concept of the provision of Paragraph 1 of Article 6 of the Constitution, in its ruling of 30 December 2003, the Constitutional Court emphasised that, when interpreting the content of Paragraph 1 of Article 107 of the Constitution, account should be taken of other provisions of the Constitution, *inter alia*, of Paragraph 1 of Article 7 of the Constitution, Article 110 of the Constitution, as well as of the constitutional principle of a state under the rule of law. It needs to be noted that the content of Paragraph 1 of Article 107 of the Constitution should also be interpreted in the context of the provisions of Paragraph 2 of this article, as well as those of Articles 1, 5, 6, 18, and 30, and Paragraph 1 of Article 102 of the Constitution.

[…]

… while taking account of the overall constitutional legal regulation consolidating the supremacy of the Constitution, it needs to be held that the retroactive applicability of the decision of the Constitutional Court that a legal act (part thereof) is in conflict with the Constitution may be constitutionally justifiable in such exceptional cases where, without applying an exception to the general rule established in Paragraph 1 of Article 107 of the Constitution that the legal force of decisions adopted by the Constitutional Court is prospective, the principle of the supremacy of the Constitution and the related constitutional imperative of the rule of law would be denied and the requirements of administering constitutional justice would, thus, be violated.

The powers of the Constitutional Court, upon establishing that a legal act denies, in essence, the fundamental constitutional values – the independence of the State of Lithuania, democracy, and the republic, or the innate nature of human rights and freedoms, to declare anticonstitutional the consequences of the application of such a legal act (Articles 1 and 18, Paragraph 1 of Article 102, and Paragraph 2 of Article 107 of the Constitution)

The Constitutional Court's decision of 19 November 2012

The fact that independence, democracy, and the republic, as well as the innate nature of human rights and freedoms, are fundamental constitutional values that constitute the foundation of the State of Lithuania as the common good of all society, as well as the fact that these values may not be denied, implies that legal acts (parts thereof) whereby the values of the State of Lithuania – its independence, democracy, and the republic, or the innate nature of human rights and freedoms – would be essentially denied may not be effective as from the day of their adoption and the consequences of the application of such legal acts (parts thereof) must be considered anticonstitutional. A different interpretation of Articles 1 and 18 of the Constitution would mean that not only the principle of the supremacy of the Constitution and the constitutional imperative of the rule of law would be denied, but also the preconditions would be created for losing the independence of the state, disrupting democracy, or abolishing the republic, for denying the innate nature of human rights and freedoms, i.e. for ruining the foundation of the State of Lithuania as the common good of all society, which is consolidated in the Constitution.

Taking account of that, the conclusion should be drawn that the provisions of Paragraph 1 of Article 102 and Paragraph 2 of Article 107 of the Constitution, interpreted in the context of the fundamental constitutional values consolidated in Articles 1 and 18 of the Constitution and in the context of the principle of the supremacy of the Constitution and the constitutional imperative of the rule of law, *inter alia*, give rise to the powers of the Constitutional Court as the institution administering constitutional justice and guaranteeing constitutional lawfulness and the supremacy of the Constitution in the legal system, upon

establishing in a constitutional justice case that an impugned legal act (part thereof) is not only in conflict with the Constitution, but also denies, in essence, the fundamental constitutional values – the independence of the State of Lithuania, democracy, and the republic, or the innate nature of human rights and freedoms, to declare anticonstitutional the consequences of the application of such a legal act (part thereof).

The constitutional prohibition on overruling the legal force of a final act adopted by the Constitutional Court; the powers of the Constitutional Court to declare anticonstitutional the consequences of the application of a legal act that violates this prohibition (Paragraph 1 of Article 102 and Paragraphs 1 and 2 of Article 107 of the Constitution)

The Constitutional Court's decision of 19 November 2012

While interpreting the constitutional legal regulation established in Paragraphs 1 and 2 of Article 107 of the Constitution, the Constitutional Court has held that, under the Constitution, after the Constitutional Court declares a law (part thereof) or another act (part thereof) of the Seimas, an act of the President of the Republic, or an act (part thereof) of the Government to be in conflict with the Constitution, the state institutions that have issued such a legal act – the Seimas, the President of the Republic, or the Government – are prohibited from repeatedly establishing the legal regulation that has been ruled to be in conflict with the Constitution, by adopting certain laws or other legal acts afterwards (ruling of 30 May 2003, the decision of 8 August 2006, and the rulings of 25 October 2011 and 5 September 2012); the legal force of a ruling of the Constitutional Court to declare a legal act or part thereof as unconstitutional may not be overruled by a repeated adoption of an analogous legal act or part thereof (*inter alia*, the rulings of 30 May 2003, 28 March 2006, 6 June 2006, and 5 September 2012).

Thus, the finality and non-appealability of the decisions of the Constitutional Court established in Paragraph 2 of Article 107 of the Constitution are the basis for the constitutional prohibition on overruling the legal force of a final act of the Constitutional Court. In its ruling of 5 September 2012, the Constitutional Court held that Paragraphs 1 and 2 of Article 107 of the Constitution, *inter alia*, give rise to the prohibition on repeatedly establishing, by means of later adopted laws or other legal acts, any such a legal regulation that is incompatible with the concept of the provisions of the Constitution set out in the acts of the Constitutional Court. While taking account of that, it needs to be noted that the constitutional prohibition on overruling the legal force of a final act of the Constitutional Court means not only the prohibition on adopting a legal act (part thereof) of the same title, legal force, subject of regulation, and scope as the one that the Constitutional Court has declared to be in conflict with the Constitution, but also the prohibition on adopting a legal act (part thereof) of a different title, legal force, subject of regulation, and scope where the content whereof would be completely or partially identical to such a legal act (part thereof) the legal regulation established in which has been, in terms of its content, declared by the Constitutional Court to be in conflict with the Constitution.

It also needs to be noted that the constitutional prohibition on overruling the legal force of a final act of the Constitutional Court is one of the means of protection consolidated in the Constitution in order to ensure the supremacy of the Constitution and the rule of law. As the Constitutional Court noted in its ruling of 5 September 2012, if the legislature, nonetheless, adopted a law whereby it disregards the said prohibition, such a law could not be a lawful ground for acquiring particular rights or a legal status; a different interpretation of Paragraphs 1 and 2 of Article 107 of the Constitution would not be in line with, *inter alia*, the principle of the supremacy of the Constitution, as well as the constitutional principles of the separation of powers and a state under the rule of law; in addition, this would also be incompatible with the general legal principle of *ex injuria jus non oritur* (illegal acts cannot create law).

Thus, the provision of Paragraph 2 of Article 107 of the Constitution implies, *inter alia*, that, if the prohibition on overruling the legal force of a final act of the Constitutional Court is violated, the principle of the supremacy of the Constitution, which is consolidated in Paragraph 1 of Article 7 of the Constitution, the related constitutional imperative of the rule of law, as well as other aspects of the principle of the supremacy of the Constitution, *inter alia*, the principle of the separation of powers, which is consolidated in Paragraph 1

of Article 5 of the Constitution, and the provision of Paragraph 2 of Article 5 thereof, whereby the scope of powers is limited by the Constitution, are simultaneously denied. While taking account of that, a legal act (part thereof) whereby an attempt is made to overrule the legal force of a final legal act of the Constitutional Court must not be considered a legal basis for acquiring legitimate expectations, certain rights, or a legal status, i.e. the consequences of the application of such a legal act (part thereof) could be regarded as anticonstitutional, *inter alia*, the consequences that arose before the adoption of the decision of the Constitutional Court that this legal act (part thereof) is in conflict with the Constitution. The opposite interpretation of Paragraph 2 of Article 107 of the Constitution would mean that, under the Constitution, the law-making subjects are provided with the possibility of overruling the legal force of final acts of the Constitutional Court, i.e. the possibility of not following the Constitution and laws for a certain period of time, until the Constitutional Court repeatedly declares the respective legal regulation to be in conflict with the Constitution. It needs to be emphasised that the recognition of such a possibility would be equal to the denial of the essence of the principle of the supremacy of the Constitution and the constitutional imperative of the rule of law; thus, the said recognition would be inconsistent with the requirements of administering constitutional justice.

In this context, it needs to be noted that … under the Constitution, *inter alia*, Paragraph 1 of Article 102 thereof, the Constitutional Court is the institution of constitutional justice, which administers constitutional justice and guarantees constitutional lawfulness and the supremacy of the Constitution in the legal system. While taking account of that, the conclusion should be drawn that the provisions of Paragraph 1 of Article 102 and Paragraph 2 of Article 107 of the Constitution, interpreted in the context of the principle of the supremacy of the Constitution, and the constitutional imperative of the rule of law, *inter alia*, give rise to the powers of the Constitutional Court, upon establishing in a constitutional justice case that an impugned legal act (part thereof) is in conflict with the Constitution and having assessed all circumstances, also to hold that this act (part thereof) should be assessed as a violation of the constitutional prohibition on overruling the legal force of a final act of the Constitutional Court, and to declare anticonstitutional the circumstances of the application of such a legal act (part thereof).

It needs to be noted that, while implementing such constitutional powers, the Constitutional Court is also bound by other imperatives of the principle of a state under the rule of law, *inter alia*, the requirements for the protection of legitimate expectations, justice, reasonableness, proportionality, *impossibilium nulla obligatio est* (nobody is obliged to do something that is impossible), and *lex non cogit ad impossibilia* (legal acts may not require impossible things). In other words, having established a violation of the constitutional prohibition on overruling the legal force of a final act of the Constitutional Court, the Constitutional Court, when deciding whether its ruling declaring a legal act (part thereof) violating this prohibition to be in conflict with the Constitution must be applied retroactively, must assess (in view of the circumstances of a constitutional justice case at issue) the possible consequences of such retroactive applicability, *inter alia*, the fact whether such applicability is possible at all, whether it would create such a burden upon society and the state that would be disproportionate to the objective aimed at removing completely the consequences of the anticonstitutional act, and whether it would create such consequences related to the said burden that would be especially unfavourable for human rights and freedoms.

In this context, it needs to be noted that, in certain special cases, the Constitution generally does not preclude the protection and defence of also such acquired rights of a person arising from legal acts declared later to be in conflict with the Constitution (or from substatutory legal acts declared later to be in conflict with the Constitution and/or laws) where the failure to defend or protect such rights would result in greater harm sustained by a person, other persons, society, or the state than harm inflicted in the case of total non-defence or non-protection, or partial defence or protection of the said rights; when deciding whether the acquired rights gained by a person during the period of the validity of a legal act that is later declared to be in conflict with the Constitution (or to be in conflict with the Constitution and/or laws if such a legal act is substatutory) must be protected and defended or not (and if so, to what extent), it is necessary in every case to find out whether, in the case of the failure to protect and defend such acquired rights, other values protected

by the Constitution would be violated and whether the balance of values consolidated, protected, and defended by the Constitution would be disturbed (rulings of 13 December 2004 and 5 July 2007 and the decision of 4 July 2008).

The prohibition precluding a court from applying a legal act declared in conflict with the Constitution (Article 110 of the Constitution)

The Constitutional Court's decision of 19 November 2012

As the Constitutional Court noted in its ruling of 30 December 2003, Article 110 of the Constitution consolidates the prohibition on applying a law that is in conflict with the Constitution and establishes the constitutional duty of a court investigating a case, if it faces doubts about the conformity of a law or another legal act that must be applied in a concrete case with the Constitution, to suspend the consideration of the case and apply to the Constitutional Court, requesting it to decide whether the law or another legal act in question is in compliance with the Constitution; such a constitutional regulation seeks to ensure that a legal act (part thereof) that is in conflict with the Constitution would not be applied, that no anticonstitutional legal consequences of the application of such a legal act (part thereof) would arise, and that the rights of a person would not be violated.

Thus, Article 110 of the Constitution establishes an exception to the general rule prescribed in Paragraph 1 of Article 107 thereof that the legal force of decisions of the Constitutional Court is prospective: a court in a case considered by it may not apply a legal act (part thereof) that was declared in conflict with the Constitution by the Constitutional Court when it was implementing the powers established in Paragraph 1 of Article 102 of the Constitution. If the prohibition, which is consolidated in Paragraph 1 of Article 110 of the Constitution, on applying a legal act (part thereof) that is in conflict with the Constitution is interpreted in a different manner, the principle of the supremacy of the Constitution, which is consolidated in Paragraph 1 of Article 7 of the Constitution, the related constitutional imperative of the rule of law, as well as other aspects of the principle of the supremacy of the Constitution, would be denied, *inter alia*, the principle of the direct application of the Constitution, which is consolidated in Paragraph 1 of Article 6 of the Constitution, the essence of the right of every person to defend his/her rights directly by invoking the Constitution, which is consolidated in Paragraph 2 of this article, and the essence of the right of every person to apply to a court while defending the violated constitutional rights or freedoms, which is consolidated in Paragraph 1 of Article 30 of the Constitution, would be denied.

The legal force of a decision of the Constitutional Court on accepting a petition

The Constitutional Court's decision of 13 November 2013

The decision of the Constitutional Court on accepting the … petition neither approves nor denies the arguments on which the position of the Seimas, the petitioner, is based; in the course of adopting such decisions, the fact whether the petition is based on legal reasoning is of essential significance (decisions of 15 December 2006, 8 January 2008, 8 October 2008, and 3 April 2009).

[…]

… under Paragraph 4 of Article 106 of the Constitution, a resolution of the Seimas asking for an investigation into the conformity of an act with the Constitution suspends the validity of that act. Under Paragraph 1 of Article 107 of the Constitution, a law (or part thereof) of the Republic of Lithuania or another act (or part thereof) of the Seimas, an act of the President of the Republic, or an act (or part thereof) of the Government may not be applied from the day of the official publication of the decision of the Constitutional Court that the act in question (or part thereof) is in conflict with the Constitution. A systemic interpretation of these provisions makes it possible to hold that the decision of the Constitutional Court on accepting a petition set out in a resolution of the Seimas requesting an investigation into whether the provisions of acts of the Government comply with the Constitution suspends the validity of the respective provisions. The fact that the Constitutional Court accepts a petition of the Seimas, the petitioner, and the suspension of the validity

of the respective legal act after the accepting of the petition neither quash nor change the legal effects that have occurred (decision of 8 October 2008).

A substatutory legal act that is identical to a legal act declared in conflict with the Constitution where such a substatutory legal act was adopted in the course of implementing the said legal act may not be applied (Paragraph 1 of Article 107 of the Constitution)

The Constitutional Court's decision of 15 December 2015

… where a legal act (part thereof) adopted by the Seimas is declared unconstitutional by a ruling of the Constitutional Court and, therefore, must not be applied in any situations, this means that the legal force of such a legal act (part thereof) is abolished and state institutions and their officials are under the duty either to abolish such substatutory legal acts (provisions thereof) that are of identical content and were adopted in the course of implementing the aforesaid legal act (part thereof) or to amend them in such a way that the content of a newly established legal regulation would not be identical to the one laid down in the unconstitutional legal act; until the moment of the fulfilment of this duty, the respective substatutory legal act (part thereof) may not be applied under any circumstances. If such a substatutory legal act (part thereof) were applied, the concept of the hierarchy of legal acts, which is consolidated in the Constitution, would be denied.

The presumption of the constitutionality of legal acts and of the lawfulness of the consequences of the application of such legal acts (Paragraph 1 of Article 107 of the Constitution)

The Constitutional Court's ruling of 27 April 2016

When interpreting Paragraph 1 of Article 107 of the Constitution, the Constitutional Court has disclosed the content of the presumption of the constitutionality of legal acts and of the constitutionality of the consequences of the application of such legal acts: the provision of Paragraph 1 of Article 107 of the Constitution, whereby a law (part thereof) may not be applied from the day of the official publication of the decision of the Constitutional Court that the act in question (part thereof) is in conflict with the Constitution, means that, as long as the Constitutional Court has not adopted a decision that a certain legal act (part thereof) is in conflict with the Constitution, it is presumed that such a legal act (part thereof) is in compliance with the Constitution and that the legal consequences that have appeared on the basis of the act in question are legitimate (*inter alia*, the rulings of 30 December 2003 and 25 October 2011 and the decision of 19 December 2012).

Consequently, under Paragraph 1 of Article 107 of the Constitution, until the moment when a decision of the Constitutional Court is officially published that a certain legal act (part thereof) is in conflict with the Constitution, it is presumed that the legal act (part thereof) in question is in compliance with the Constitution, and that the legal consequences (as, for instance, where, on the basis of a decision adopted by an institution following the said legal act (part thereof), a person acquired certain rights or a certain legal status or, on the basis of a decision adopted by an institution, a person was not granted certain rights or a certain legal status) that have appeared on the basis of the legal act in question are legitimate (ruling of 25 October 2011).

When the Constitutional Court administers constitutional justice, the stability of the legal system may not be violated and the trust of the subjects of legal relationships in legal acts adopted in the state may not be undermined

The Constitutional Court's ruling of 16 April 2019

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

As the Constitutional Court has held on more than one occasion, it exercises constitutional judicial review; the Constitutional Court is the institution of constitutional justice; while deciding, within its competence, on the compliance of lower-ranking legal acts (parts thereof) with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution, and exercising its other constitutional powers, the Constitutional Court – an autonomous and independent court – administers constitutional justice and guarantees constitutional lawfulness and the supremacy of the Constitution in the legal system.

In this context, it should be noted that the concept of constitutional justice, which stems from the Constitution, implies not formal and nominal constitutional justice, but such final acts of the Constitutional Court that are not unfair by their content; otherwise, if no possibility is created for the Constitutional Court to adopt, in accordance with the powers conferred on it, such a final act that would meet the criteria of justice, the supremacy of the Constitution in the legal system would not be ensured, and the administration of constitutional justice and the ensuring of constitutional lawfulness would be prevented; the powers of the Constitutional Court to administer constitutional justice and to ensure constitutional lawfulness are inseparable from the imperatives of the constitutional principle of a state under the rule of law, *inter alia*, from the requirements of the protection of legitimate expectations, legal security, legal certainty, justice, and reasonableness (ruling of 19 June 2018).

… under Paragraph 1 of Article 107 of the Constitution, a legal act (or part thereof) may not be applied from the day of the official publication of the decision of the Constitutional Court that the act in question (or part thereof) is in conflict with the Constitution.

In this context, it should be noted that Paragraph 1 of Article 107 of the Constitution consolidates the general rule that the legal force of decisions adopted by the Constitutional Court is prospective (*inter alia*, the ruling of 30 December 2003 and the decisions of 19 December 2012 and 21 March 2019). It should also be noted that Paragraph 1 of Article 107 of the Constitution gives rise to the presumption of the constitutionality of legal acts and the legitimacy of the consequences of their application: as the Constitutional Court has held on more than one occasion, the provision of Paragraph 1 of Article 107 of the Constitution that a legal act (part thereof) may not be applied from the day of the official publication of the decision of the Constitutional Court that the act in question (part thereof) is in conflict with the Constitution means that, as long as the Constitutional Court has not officially published the decision that a certain legal act (part thereof) is in conflict with the Constitution, it is presumed that such a legal act (part thereof) is in compliance with the Constitution and that the legal consequences that have appeared on the basis of the act in question are legitimate (*inter alia*, the rulings of 30 December 2003 and 25 October 2011 and the decision of 21 March 2019).

Therefore, in the light of the above-mentioned imperatives of the constitutional principle of a state under the rule of law, *inter alia*, the requirements of the protection of legitimate expectations, legal security, legal certainty, justice, and reasonableness, as well as in the light of the imperative of the balance of constitutional values and the above-mentioned presumption of the constitutionality and legitimacy of legal acts, it should be noted that, when the Constitutional Court administers constitutional justice and ensures constitutional lawfulness by adopting rulings in the cases before it, the stability of the legal system may not be violated and the trust of the subjects of legal relationships in legal acts adopted in the state may not be undermined.

The duty of law-making subjects to establish a legal regulation that is not in conflict with the Constitution

The Constitutional Court's ruling of 25 November 2019

… as held by the Constitutional Court, the removal of legal gaps is a matter within the competence of the respective (competent) law-making subject; it is also possible to fill legal gaps to a certain extent in the course of the application of law and, thus, also in the course of interpreting law, *inter alia*, by courts that administer justice and, within their competence, decide individual cases and are obliged to interpret law in order they could apply it; courts can fill legal gaps on an ad hoc basis, i.e. they may remove legal gaps with respect to an individual social relationship due to which a concrete dispute is decided in the respective case

before the court. It is possible to conclusively remove legal gaps only when the law-making institutions issue the respective legal acts; the possibility of filling legal gaps ad hoc does not mean that the legislature does not have the duty, paying regard to the Constitution and within a reasonable time period, to establish the proper legal regulation of particular relationships by means of a law (*inter alia*, the decision of 8 August 2006 and the ruling of 7 June 2007). The constitutional duty to establish the proper legal regulation of particular relationships by means of legal acts within a reasonable time period and having regard to the Constitution is also *mutatis mutandis* applicable to other law-making subjects.

The suspension of the validity of a legal act impugned before the Constitutional Court

The Constitutional Court's decision (no KT98-S93/2020) of 28 May 2020

… under Paragraph 5 (wording of 21 March 2019) of Article 106 of the Constitution, a resolution of the Seimas asking for an investigation into the conformity of an act with the Constitution suspends the validity of that act. It should be noted that the suspension of the validity of a legal act, as provided for in Paragraph 5 of Article 106 of the Constitution, in those cases where the President of the Republic or the Seimas, by means of its resolution, applies to the Constitutional Court concerning the compliance of this legal act with the Constitution does not in itself deny the presumption of the constitutionality of the impugned legal act and the legitimacy of the consequences of its application, which stems from Paragraph 1 of Article 107 of the Constitution.

In this context, it should also be noted that the Constitutional Court has held on more than one occasion that the decision of the Constitutional Court to accept a petition of the Seimas, the petitioner, and the suspension of the validity of the respective legal act upon accepting the petition neither annul nor change the legal consequences that have occurred (decisions of 8 January 2008, 8 October 2008, and 13 November 2013).

8.5.3. The publication of acts adopted by the Constitutional Court

The powers of the Constitutional Court to postpone the official publication of its rulings (Paragraph 1 of Article 107 of the Constitution)

The Constitutional Court's ruling of 19 January 2005

… from the day of the public pronouncement of a ruling or another decision of the Constitutional Court in the courtroom until its official publication … a certain period of time passes. Thus, normally, after a ruling of the Constitutional Court is pronounced in the courtroom, its content is known before its official publication, although, according to the procedure set by the Constitution and laws, such a ruling of the Constitutional Court is not yet valid.

Under Paragraph 1 of Article 107 of the Constitution, a law (or part thereof) may not be applied from the day of the official publication of the decision of the Constitutional Court that the law in question (or part thereof) is in conflict with the Constitution. Thus, after the entry into effect of a ruling of the Constitutional Court that has declared a law (part thereof) to be conflicting with the Constitution, there might appear various indeterminacies in the legal system, *lacunae legis* – gaps in the legal regulation, or even a vacuum. Thus, it is necessary to modify the regulation laid down in laws in such a way that the gaps in the legal regulation and other uncertainties would be removed and the legal regulation would be clear and harmonised.

Under the Constitution, the Constitutional Court, having assessed, *inter alia,* what legal situation might arise after a ruling of the Constitutional Court becomes effective, may establish the date of the official publication of that ruling; the Constitutional Court may postpone the official publication of its ruling if this is necessary to give the legislature time to remove the *lacunae legis* that would occur if the respective ruling of the Constitutional Court were officially published immediately after its public pronouncement at the hearing of the Constitutional Court and if such a *lacunae legis* constituted the preconditions for denying, in essence, certain values defended and protected by the Constitution. The said postponement of the official

publication of a ruling of the Constitutional Court (*inter alia*, a ruling by which a certain law (or part thereof) is ruled to be in conflict with the Constitution) is a precondition stemming from the Constitution in order to avoid certain consequences unfavourable to society and the state, as well as to human rights and freedoms, that might arise if the respective ruling of the Constitutional Court were officially published immediately after it is pronounced publicly at the hearing of the Constitutional Court and if it became effective on the day of its official publication.

It should be stressed that the legislature, while passing new laws or amending and supplementing valid ones, may not disregard the concept of the provisions of the Constitution and other legal arguments set out in a ruling of the Constitutional Court that was officially published and became effective. Otherwise, the preconditions would be created to declare such laws, provided the Constitutional Court was addressed regarding their constitutionality, to be in conflict with the Constitution. … such preconditions could also emerge in cases where laws are adopted or valid laws are amended or supplemented while disregarding the concept of the provisions of the Constitution and other legal arguments stated in a ruling of the Constitutional Court publicly pronounced at the hearing of the Constitutional Court but not yet published officially, regardless of whether or not such a ruling of the Constitutional Court ruled a certain law (or part thereof) to be in conflict with the Constitution.

It should be held that the said statements regarding the time passing from the public pronouncement of a ruling of the Constitutional Court in the courtroom until the official publication of such a ruling may be applied *mutatis mutandis* to conclusions and decisions of the Constitutional Court.

The powers of the Constitutional Court to postpone the official publication of its rulings

The Constitutional Court's ruling of 1 July 2013

… the Constitutional Court has the constitutional powers to establish a later date of the official publication (thus, also that of the entry into force) of its ruling that declares a certain legal act (part thereof) to be in conflict with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution, in cases where, in order to implement that ruling, it is necessary to accordingly redistribute the financial resources of the state and to adopt the related amendments to laws.

8.5.4. The interpretation of acts adopted by the Constitutional Court

The powers of the Constitutional Court to interpret its final acts

The Constitutional Court's decision of 14 March 2006

While deciding, within its competence, on the compliance of lower-ranking legal acts (parts thereof) with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution, and exercising its other constitutional powers, the Constitutional Court administers constitutional justice and guarantees constitutional lawfulness and the supremacy of the Constitution in the legal system. Administering constitutional justice, as well as guaranteeing constitutional lawfulness and the supremacy of the Constitution in the legal system, implies that every decision of the Constitutional Court must be argued properly (clearly and rationally) in the respective act of the Constitutional Court. In this context, it should be noted that, as held by the Constitutional Court, a ruling of the Constitutional Court is integral, its operative part is based on the arguments of the reasoning part (decisions of 12 January 2000, 11 February 2004, 13 February 2004, and 10 February 2005).

On the other hand, such situations are possible where certain provisions of a ruling or another final act of the Constitutional Court are not clear enough to the subject that must follow and execute that ruling of another act of the Constitutional Court. Such situations are also possible where, due to certain reasons, the Constitutional Court sees that certain provisions of a ruling or another final act of the Constitutional Court must be interpreted in order to ensure the proper execution of that ruling or another act of the Constitutional Court so that the said ruling or another act of the Constitutional Court would be followed.

Even though the powers of the Constitutional Court to interpret its rulings and other final acts are not *expressis verbis* consolidated in the Constitution, they doubtlessly arise from the Constitution – the entirety of the constitutional legal regulation (*inter alia*, the constitutional principle of a state under the rule of law): such powers of the Constitutional Court are implied by the constitutional mission of the Constitutional Court to administer constitutional justice and to guarantee constitutional lawfulness and the supremacy of the Constitution in the legal system. This implies the necessity for the Constitutional Court, under the specified circumstances, to interpret the respective ruling or another final act of the Constitutional Court.

The purpose of the institution of the interpretation of rulings and other final acts of the Constitutional Court is to reveal the content and meaning of certain provisions of a ruling or another final act of the Constitutional Court more broadly and in more detail where this is necessary so that the proper execution of that ruling or another final act would be ensured and the said ruling or another final act of the Constitutional Court would be followed.

The powers of the Constitutional Court, which arise from the Constitution, to interpret its rulings and other final acts imply the duty of the legislature to establish in the Law on the Constitutional Court (which, under Paragraph 2 of Article 102 of the Constitution, establishes the status of the Constitutional Court and the procedure for the execution of its powers) the following: the definition of the subjects on whose initiative a ruling or another final act of the Constitutional Court may be interpreted; the procedure for applying to the Constitutional Court with a petition requesting the interpretation of a ruling or another final act of the Constitutional Court; and the form of a legal act by which the Constitutional Court performs the interpretation of its rulings. The Law on the Constitutional Court may also establish other elements regarding the implementation of the powers of the Constitutional Court to interpret its rulings.

[…]

… the Constitutional Court must interpret its ruling without changing its content. The Constitutional Court has held that, when interpreting its ruling, the Constitutional Court is bound both by the content of the operative part and reasoning part of its ruling (decisions of 12 January 2000, 11 February 2004, 13 February 2004, and 10 February 2005).

… a decision concerning the interpretation of a ruling of the Constitutional Court is adopted as a separate document. The Constitutional Court has held that a decision adopted concerning the interpretation of a ruling of the Constitutional Court is inseparable from that ruling of the Constitutional Court (decisions of 12 January 2000, 11 February 2004, 13 February 2004, and 10 February 2005).

… while interpreting its ruling, the Constitutional Court may not interpret the content of the ruling in such a way that would change the meaning of its provisions, *inter alia*, the notional entirety of the elements constituting the content of the ruling, and the arguments and reasons upon which that ruling of the Constitutional Court is based.

… the Constitutional Court may not interpret what it did not investigate in the constitutional justice case in which the ruling that is being interpreted was adopted.

Thus, the institution of the interpretation of a ruling (another final act) of the Constitutional Court differs in substance from the institution of the review of a ruling (another final act) of the Constitutional Court.

The interpretation of final acts of the Constitutional Court where this is necessary so that such acts would be properly followed in administering justice

The Constitutional Court's decision of 22 April 2010

In its acts, the Constitutional Court has held more than once that the purpose of the institution of the interpretation of rulings and other final acts of the Constitutional Court is to reveal the content and meaning of certain provisions of a ruling or another final act of the Constitutional Court more broadly and in more detail where this is necessary so that the proper execution of that ruling or another final act would be ensured and the said ruling or another final act of the Constitutional Court would be followed.

Thus, if a court considering a case applies to the Constitutional Court with a petition requesting the interpretation of certain provisions of a ruling or another final act of the Constitutional Court and if the Constitutional Court does not interpret such provisions of its ruling or another final act and does not reveal the content and meaning thereof more broadly and in more detail where this is necessary in order to ensure the proper execution of that ruling or another final act of the Constitutional Court so that the said ruling or another final act of the Constitutional Court would be followed, the values, *inter alia*, the constitutional rights of a person consolidated, defended, and protected by the Constitution could be violated, which would mean that justice would not be administered.

[…]

… the right of the Constitutional Court, which is laid down in … the Law on the Constitutional Court, to officially interpret its ruling, *inter alia*, on its own initiative, means that the Constitutional Court interprets its rulings or other final acts, i.e. discloses the content and meaning of these acts more broadly and in more detail where this is necessary in order to ensure the proper execution of the respective ruling or another final act of the Constitutional Court and in order to ensure that the respective ruling or another final act of the Constitutional Court would be not formally, but properly followed and that justice consolidated, protected, and defended by the Constitution would be administered. The *ex officio* powers of the Constitutional Court to interpret its rulings or other final acts also mean that the Constitutional Court may interpret its rulings or other final acts where this is necessary so that acts adopted by the Constitutional Court would be followed properly while administering justice irrespective of whether the respective petition of the subjects indicated in the Law on the Constitutional Court is present.

In view of the said circumstances, it needs to be held that, having established the constitutionally justifiable interest of the petitioner – a court considering a case – to remove doubts about the proper execution of rulings or other final acts (provisions thereof) of the Constitutional Court in order that justice would be properly administered in a case considered by that court, the Constitutional Court may accept requests to interpret certain provisions of a ruling or another final act of the Constitutional Court and investigate these requests in the manner prescribed by law, as well as pronounce a decision on such interpretation.

The interpretation of final acts of the Constitutional Court

The Constitutional Court's decision of 29 November 2012

The Constitutional Court has held that, even though the powers of the Constitutional Court to interpret its rulings and other final acts are not *expressis verbis* consolidated in the Constitution, they doubtlessly arise from the Constitution – the entirety of the constitutional legal regulation (*inter alia*, the constitutional principle of a state under the rule of law): such powers of the Constitutional Court are implied by the constitutional mission of the Constitutional Court itself to administer constitutional justice and to guarantee constitutional lawfulness and the supremacy of the Constitution in the legal system (decision of 14 March 2006).

In its acts, the Constitutional Court has held on more than one occasion that the purpose of the institution of the interpretation of its rulings and other final acts is to reveal the content and meaning of certain provisions of a ruling or another final act of the Constitutional Court more broadly and in more detail where this is necessary in order to ensure the proper execution of that ruling or another final act of the Constitutional Court and in order to ensure that the said ruling or another final act of the Constitutional Court would be followed (*inter alia*, the decisions of 22 December 2010, 23 February 2011, and 5 September 2011).

In this context, it needs to be emphasised that the purpose of the interpretation of a ruling or another final act of the Constitutional Court is to explain more comprehensively the provisions and formulations of a ruling or another final act of the Constitutional Court regarding the meaning of which there are some uncertainties, but not to explain how to implement the said ruling or another final act in a concrete situation, *inter alia*, in the area of the application of law.

It should be noted that the interpretation of a ruling or another final act of the Constitutional Court may be significant not only in order to ensure the proper implementation of the decision consolidated in the operative part of that act, but also to ensure the fact that, in the law-making process, proper consideration is given to the official constitutional doctrine formed by the Constitutional Court.

It should be emphasised that petitions requesting the interpretation of an implemented ruling or another final act of the Constitutional Court may not seek the assessment of the compliance of a legal act adopted for implementing the said ruling or another final act of the Constitutional Court with other higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution; this would constitute a matter for a new constitutional justice case.

… it needs to be noted that, under Paragraph 3 of Article 107 of the Constitution, on the basis of the conclusions of the Constitutional Court, the Seimas takes a final decision. Thus, after receiving the conclusion of the Constitutional Court that the election law was violated during the election of the members of the Seimas, the Seimas is obliged to adopt a final decision.

In cases where, on the grounds of a conclusion of the Constitutional Court, a final decision of the Seimas was adopted, the Constitutional Court has the powers to assess and decide on whether or not the interpretation of that conclusion would be senseless and on refusing to interpret it. A conclusion of the Constitutional Court on the grounds of which a final decision of the Seimas was adopted may be interpreted, *inter alia*, for the purpose that, in the law-making process, proper consideration would be given to the official constitutional doctrine formed by the Constitutional Court.

It needs to be noted that a petition requesting the interpretation of the conclusion of the Constitutional Court that during the election of the members of the Seimas the law on elections was violated may not question the compliance of an act of the Seimas adopted on the grounds of the said conclusion with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution. This may be done by initiating a new constitutional justice case, where subjects provided for in the Constitution apply to the Constitutional Court with a petition.

The Constitutional Court has emphasised on more than one occasion that the consideration of a petition requesting the interpretation of a ruling or another final act of the Constitutional Court does not imply any new constitutional justice case.

In this context, it should be noted that … the Constitutional Court must interpret its ruling without changing its content. The Constitutional Court has held on more than one occasion that … while interpreting its ruling, the Constitutional Court may not interpret the content of the ruling in such a way that would change the meaning of its provisions, *inter alia*, the notional entirety of the elements constituting the content of the ruling, and the arguments and reasons upon which that ruling of the Constitutional Court is based. A ruling of the Constitutional Court is integral and all its constituent parts are interrelated; the operative (resolving) part of a ruling is based upon the arguments of the reasoning part; while interpreting its ruling, the Constitutional Court is bound by the content of both the operative part and reasoning part of its ruling. … the Constitutional Court has also held in its acts on more than one occasion that the Constitutional Court may not interpret what it did not investigate in the constitutional justice case in which the ruling, the interpretation of which is requested, was adopted; this would imply a matter for a separate investigation.

The Constitutional Court has also held that the powers of the Constitutional Court, which arise from the Constitution and which are established in the Law on the Constitutional Court, to officially interpret its rulings may not be interpreted as meaning that they also include the duty of the Constitutional Court to interpret such arguments or reasons of the consolidation and formulation of its ruling or separate provisions thereof that are not specified in that ruling of the Constitutional Court (decision of 14 March 2006).

These provisions *mutatis mutandis* also apply where the Constitutional Court interprets its other final acts, *inter alia*, conclusions presented under Paragraph 3 of Article 105 of the Constitution.

… it also needs to be noted that, in cases where the Constitutional Court is requested to provide the interpretation of the provisions of the operative part of its ruling or another final act by ignoring their link with the provisions of the official constitutional doctrine set out in the reasoning part and with other

arguments, the Constitutional Court, while taking account of the fact that the provisions of the operative part of a ruling or another final act may not be interpreted in isolation of the provisions of the official constitutional doctrine set out in the reasoning part and in isolation of other arguments, has the powers to refuse to interpret its ruling or another legal act subsequent to such a petition.

The interpretation of final acts of the Constitutional Court

The Constitutional Court's decision of 13 March 2013

In its acts, the Constitutional Court has held more than once that the purpose of the institution of the interpretation of its rulings and its other final acts is to reveal the content and meaning of certain provisions of a ruling or another final act of the Constitutional Court more broadly and in more detail where this is necessary in order to ensure the proper execution of that ruling or another final act of the Constitutional Court so that the said ruling or another final act of the Constitutional Court would be followed (*inter alia*, the decisions of 22 December 2010, 23 February 2011, 5 September 2011, and 29 November 2012). The interpretation of a ruling or another final act of the Constitutional Court may be significant not only in seeking to ensure the proper implementation of the decision consolidated in the operative part of the said act, but also to ensure that, in the law-making process, proper consideration is given to the official constitutional doctrine formulated by the Constitutional Court (decision of 29 November 2012).

In its decision of 29 November 2012, the Constitutional Court emphasised that the purpose of the interpretation of a ruling or another final act of the Constitutional Court is to explain more comprehensively the provisions and formulations of a ruling or another final act of the Constitutional Court regarding the meaning of which there are some uncertainties, but not to explain how to implement the said ruling or another final act in a concrete situation, *inter alia*, in the area of the application of law.

… the Constitutional Court has held that, in the course of the interpretation of its ruling, it is bound by the content of both the operative and reasoning parts of its ruling. It has also been held on more than one occasion that … in interpreting its ruling, the Constitutional Court may not interpret the content of the ruling in such a way that would change the meaning of its provisions, *inter alia*, the notional entirety of the elements constituting the content of the ruling, and the arguments and reasons upon which that ruling of the Constitutional Court is based; it has also been held that the Constitutional Court may not interpret what it did not investigate in the constitutional justice case in which the ruling, the interpretation of which is requested, was adopted. The consideration of a petition requesting the interpretation of a ruling of the Constitutional Court or its other final act does not imply a new constitutional justice case.

Thus, while interpreting its final acts, the Constitutional Court does not review them; it may not refer to reasons other than those set out in the reasoning part of the interpreted legal act and it may not interpret its final act differently from what is decided in its operative part.

It needs to be noted that the Constitutional Court carries out constitutional judicial control; the Constitutional Court is the institution of constitutional justice; the Constitutional Court – an individual and independent court – administers constitutional justice and guarantees constitutional lawfulness and the supremacy of the Constitution in the legal system (*inter alia*, the rulings of 6 June 2006 and 29 June 2010 and the decision of 19 December 2012). It also needs to be noted that the Constitutional Court, while invoking the official constitutional doctrine and precedents that it itself has formed, must ensure the continuity of the constitutional jurisprudence (its coherence and consistency) and the predictability of its decisions (decision of 21 November 2006 and the rulings of 22 October 2007, 24 October 2007, and 5 September 2012).

Thus, the Constitutional Court is a legal, but not a political institution. The Constitutional Court decides the legal issues assigned to its competence by the Constitution only by invoking legal arguments, *inter alia*, the official constitutional doctrine and precedents that it itself formulated. While taking account of this, it needs to be noted that the interpretation of final acts of the Constitutional Court may not be determined by accidental (from the legal point of view) factors (for example, change in the composition of the Constitutional Court); the Constitutional Court may not interpret its final acts by following, *inter alia*,

political expediency arguments, documents of political parties or other public organisations, opinions of and assessments by politicians, political science or sociological research, or results of public opinion polls. Otherwise, the preconditions may arise for doubting the impartiality of the Constitutional Court and a threat may emerge to its independence and the stability of the Constitution itself, *inter alia*, the official constitutional doctrine.

It should also be noted that the uniformity and continuity of the official constitutional doctrine imply the necessity to interpret each provision of a ruling or another final act of the Constitutional Court in the light of both the entire official constitutional doctrinal context and other provisions (both explicit and implicit) of the Constitution that are related to the provision (provisions) of the Constitution in the course of the interpretation of which the respective provision of the official constitutional doctrine was formulated in a certain ruling or another final act of the Constitutional Court. As the Constitutional Court has held more than once, no official constitutional doctrinal provision of a ruling or another final act of the Constitutional Court may be interpreted in isolation, by ignoring its meaning and systemic links with other official constitutional doctrinal provisions set out in that ruling or another final act of the Constitutional Court, or in other acts of the Constitutional Court, as well as with other provisions (explicit and implicit) of the Constitution (*inter alia*, the decisions of 28 October 2009, 6 November 2009, and 18 December 2009).

[…]

The Constitutional Court has also held more than once that, in the official interpretation … of rulings and other final acts of the Constitutional Court, the official constitutional doctrine is not modified; the modification of the official constitutional doctrine (which, undoubtedly, must always be constitutionally justified and explicitly reasoned in the respective act of the Constitutional Court) should be related to the consideration of new constitutional justice cases and the creation of new precedents of the Constitutional Court therein, but not with the official interpretation of the provisions of rulings and other final acts of the Constitutional Court (decisions of 6 December 2007, 1 February 2008, 4 July 2008, 15 January 2009, 15 May 2009, 28 October 2009, 6 November 2009, and 18 December 2009).

The interpretation of final acts of the Constitutional Court

The Constitutional Court's decision of 8 November 2017

… when interpreting its final acts, the Constitutional Court may not amend them and/or modify the official constitutional doctrine set out in these acts on the grounds of the changed legal regulation established in laws and other legal acts where the legal regulation changed after the adoption of the said final acts.

The decision of the Constitutional Court to accept a petition is not a final act the provisions of which the Constitutional Court has the powers to interpret under the Constitution

The Constitutional Court's decision (no KT98-S93/2020) of 28 May 2020

… the decision of the Constitutional Court [to accept a petition] is not a final act of the Constitutional Court the provisions of which the Constitutional Court has the powers to officially interpret under the Constitution and the Law on the Constitutional Court. By such a decision, neither the constitutional justice case is completed (upon having considered the constitutional justice case on its merits, or having dismissed the instituted legal proceedings, or having dismissed the case) nor the consideration of the petition is refused.

An announcement by the President of the Constitutional Court is not a final act the provisions of which the Constitutional Court has the powers to interpret under the Constitution

The Constitutional Court's decision (no KT98-S93/2020) of 28 May 2020

… an announcement by the President of the Constitutional Court is not a final act of the Constitutional Court the provisions of which the Constitutional Court has the powers to officially interpret under the Constitution and the Law on the Constitutional Court.

8.5.5. The review of acts adopted by the Constitutional Court

The review of final acts adopted by the Constitutional Court; the development of the official constitutional doctrine does not constitute grounds for reviewing the final acts of the Constitutional Court adopted in previous cases

The Constitutional Court's ruling of 28 March 2006

Under Paragraph 2 of Article 107 of the Constitution, which … prescribes that the decisions of the Constitutional Court on the issues assigned to its competence by the Constitution are final and not subject to appeal, the rulings, conclusions, and decisions of the Constitutional Court by which a constitutional justice case is completed, i.e. final acts of the Constitutional Court, may not be reviewed except in cases where the necessity to review them stems from the Constitution itself.

… the rulings, conclusions, and decisions of the Constitutional Court by which a constitutional justice case is completed, i.e. final acts of the Constitutional Court, are final and not subject to appeal, irrespective of whether the Constitutional Court adopts such acts in the respective constitutional justice case after it has investigated on the merits the compliance of a legal act (part thereof) with the Constitution (another higher-ranking legal act) or has not investigated the compliance of a legal act (part thereof) with the Constitution (another higher-ranking legal act) on the merits but, by means of a properly (clearly and rationally) reasoned decision, has refused to consider the petition, or has dismissed the instituted legal proceedings (case) (where the respective petition has been received at the Constitutional Court and the preparation of a constitutional justice case for a hearing at the Constitutional Court has begun, or if it has already been considered in a hearing at the Constitutional Court).

… the phrase "shall be final and not subject to appeal" of Paragraph 2 of Article 107 of the Constitution, which … prescribes that the decisions of the Constitutional Court on the issues assigned to its competence by the Constitution are final and not subject to appeal, means that rulings, conclusions, or decisions of the Constitutional Court by which a constitutional justice case is completed, i.e. final acts of the Constitutional Court, are obligatory for all state institutions, courts, all enterprises, establishments and organisations, as well as officials and citizens, including the Constitutional Court itself: final acts of the Constitutional Court are obligatory for the Constitutional Court itself and they restrict the Constitutional Court from the aspect that it may not change them or review them if there are no constitutional grounds for doing so.

Thus, it needs to be emphasised that, under the Constitution, no development of the official constitutional doctrine – neither the supplementing of the conception of the provisions of the Constitution provided in the acts of the Constitutional Court adopted in previous constitutional justice cases with new elements (fragments) nor the reinterpretation of the official constitutional doctrinal provisions formulated previously where the official constitutional doctrine is modified – may constitute or constitutes grounds for reviewing the rulings, conclusions, or decisions (or their reasoning) that were adopted in previous constitutional justice cases and by which certain constitutional justice cases were completed.

The same can also be said about such cases where the Constitutional Court, after it receives a petition of a court of general jurisdiction or a specialised court (established under Paragraph 2 of Article 111 of the Constitution) requesting an investigation into and a decision on whether a certain act (part thereof) passed by the Seimas, the President of the Republic, or the Government or that adopted by referendum is in conflict with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, does not decide, under the Constitution and the Law on the Constitutional Court, on the respective question on the merits by means of a properly (clearly and rationally) argued decision – it refuses to consider the petition or dismisses the instituted legal proceedings (case) where the respective petition has been received at the Constitutional Court and the preparation of a constitutional justice case for a hearing at the Constitutional Court has begun or it has already been considered in a hearing at the Constitutional Court.

[…]

… neither any development of the official constitutional doctrine nor the application of new methods of the interpretation of law while interpreting certain provisions of the Constitution constitutes or may

constitute grounds for the Constitutional Court to review its final legal acts – rulings, conclusions, and decisions, *inter alia*, those by means of which the Constitutional Court refuses to consider a petition of the petitioner – a court – requesting an investigation into and a decision on whether a legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government or that adopted by referendum is in conflict with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, or by which the instituted legal proceedings (case) are (is) dismissed where the respective petition has been received at the Constitutional Court and the preparation of a constitutional justice case for a hearing at the Constitutional Court has begun or it has already been considered in a hearing at the Constitutional Court.

… Paragraph 1 of Article 107 of the Constitution means that every legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government or that adopted by referendum where such a legal act is declared in conflict with any higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, is removed from the Lithuanian legal system for good and may never be applied.

… [the] provisions [of Paragraphs 1 and 2 of Article 107] of the Constitution help to ensure the stability and certainty of the legal regulation of social relationships, the continuity of the jurisprudence of the Constitutional Court (and other courts), the predictability of their activity and adopted decisions, while the subjects of constitutional legal relationships are protected from such review of final legal acts adopted by the Constitutional Court that would be determined not by the objective constitutional necessity, but by accidental (from the legal point of view) factors.

The powers of the Constitutional Court to review its final acts where the necessity to review them stems from the Constitution itself (where new essential circumstances come to light)

The Constitutional Court's ruling of 28 March 2006

Although the Constitution does not *expressis verbis* specify that the Constitutional Court has the powers to review its rulings, conclusions, and decisions, nor does it contain any *expressis verbis* specified grounds empowering the Constitutional Court to review its rulings, conclusions, and decisions, this does not mean that the said powers and grounds for the Constitutional Court are not established in the Constitution at all. The powers of the Constitutional Court to review its rulings, conclusions, and decisions arise out of the constitutional mission of the Constitutional Court to administer constitutional justice, to guarantee constitutional lawfulness and the supremacy of the Constitution in the legal system; such powers of the Constitutional Court are also implied by the constitutional principle of a state under the rule of law, according to which it is required that jurisdictional institutions (thus, including the Constitutional Court) seek to establish the objective truth and that they adopt their decisions only on the grounds of law (rulings of 11 May 1999, 19 September 2000, 24 January 2003, and 13 December 2004).

The opposite interpretation would mean that the Constitutional Court may not review its rulings, conclusions, and decisions even where they were adopted when the Constitutional Court did not know about such essential circumstances that, if had been known, could determine a different content of the adopted rulings, conclusions, and decisions. It is obvious that such interpretation would be inconsistent with the constitutional mission of the Constitutional Court and the concept of the powers established for it in the Constitution, because this would imply, *inter alia*, the fact the Constitutional Court may not administer constitutional justice and guarantee constitutional lawfulness and the supremacy of the Constitution in the legal system.

However, it should be emphasised that the Constitutional Court may review its rulings, conclusions, and decisions only if there are constitutional grounds for doing so. The interpretation that the Constitutional Court may also review its rulings, conclusions, and decisions where the necessity to review them does not arise out of the Constitution, i.e. where no significant new circumstances come to light that were unknown at the time when the respective final act of the Constitutional Court was passed, would mean that the Constitutional Court is not bound by Paragraph 2 of Article 107 of the Constitution, under which … final acts of the Constitutional Court are binding on the Constitutional Court itself and they restrict the

Constitutional Court from the aspect that it may not change or review them if there are no constitutional grounds for doing so. Such interpretation would also not be in line with the Constitution because it would create the preconditions for denying the continuity of the constitutional jurisprudence and violating the principle of the supremacy of the Constitution, the constitutional principle of a state under the rule of law, and other provisions of the Constitution.

[…]

… the Constitutional Court has the powers to review not only its rulings, but also its other final acts.

However, it should be emphasised that … under the Constitution, the final acts of the Constitutional Court are final and not subject to appeal; therefore, they are obligatory for the Constitutional Court itself (irrespective of whether the Constitutional Court adopts such acts in the respective constitutional justice case after it has investigated on the merits the compliance of a legal act (part thereof) with the Constitution (another higher-ranking legal act) or where it has not investigated such compliance on the merits); they restrict the Constitutional Court from the aspect that it may not change or review them if there are no constitutional grounds for doing so; they may be reviewed only in cases where the necessity to review them arises out of the Constitution itself. …

[…]

It needs to be noted that a final act of the Constitutional Court may be reviewed only upon the initiative of the Constitutional Court itself … . This provision does not mean that various legal subjects, *inter alia*, those that, under the Constitution … may apply to the Constitutional Court with a petition or request on the issues assigned to the jurisdiction of the Constitutional Court, may not raise the question of the review of a final act of the Constitutional Court at the Constitutional Court; however, under the Constitution … while deciding whether to do so, the Constitutional Court has broad discretion.

Amendments to the Constitution do not constitute grounds for reviewing acts adopted by the Constitutional Court

The Constitutional Court's ruling of 28 March 2006

No amendments or supplements to a higher-ranking legal act (including the Constitution) that are made after the Constitutional Court has declared, by referring to the previous provisions of the Constitution, a certain legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government or adopted by referendum to be in conflict with a certain higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, may reinstate the legal act (part thereof) declared to be in conflict with a certain higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, in the Lithuanian legal system. Under the Constitution, the Constitutional Court does not have the powers to reinstate such legal acts (parts thereof) in the Lithuanian legal system, either. In the same vein, no amendments or supplements to a higher-ranking legal act (including the Constitution) that are made after the Constitutional Court has declared, by referring to the previous provisions of the Constitution, a certain legal act passed by the Seimas, the President of the Republic, or the Government or adopted by referendum to be in compliance with a certain higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, mean that the decision on the said legal act may or must be changed with retroactive effect. On the other hand, when an amendment to the Constitution is made, the legislature and other law-making subjects must harmonise the legal acts that they have passed and that are still valid with the amended legal regulation; however, this does not imply that the examined constitutional justice cases on the compliance of a certain previous legal regulation with a certain higher-ranking legal regulation, *inter alia* (and, first of all), with the Constitution, must be renewed or that the decisions adopted therein must be reviewed or changed.

This is also *mutatis mutandis* applicable to such cases where the Constitutional Court, referring to the previous provisions of the Constitution, presents a conclusion on any of the questions specified in Paragraph 3 of Article 105 of the Constitution …: such a conclusion remains valid even if the provisions of the Constitution on the basis of which the respective conclusion was made and presented are changed or repealed. Moreover, this is *mutatis mutandis* applicable to the decisions of the Constitutional Court that are

adopted without investigating on the merits the compliance of an impugned legal act (part thereof) with the Constitution (another higher-ranking legal act), but by properly (clearly and rationally) refusing, by means of a reasoned decision, to consider a petition or by dismissing the instituted legal proceedings (case) (if the respective petition has been received at the Constitutional Court and the preparation of a constitutional justice case for a hearing at the Constitutional Court has begun or if it has already been considered in a hearing at the Constitutional Court).

Thus, the Constitution does not give any grounds for reinstating retroactively a legal act (part thereof) that has been declared in conflict with a certain higher-ranking legal regulation, *inter alia* (and, first of all), with one established in the Constitution, in the Lithuanian legal system, or for questioning and annulling particular rulings, conclusions, or decisions of the Constitutional Court that were constitutionally justifiable at the moment when they were adopted. A different interpretation would result in the disregard of not only the provisions of the Constitution that consolidate the institution of constitutional justice – constitutional judicial control – *inter alia*, the fact that the decisions of the Constitutional Court are final and not subject to appeal, but also would lead to the denial of the stability of the Constitution, the predictability of decisions adopted by the Constitutional Court, and the legitimate expectations of various legal subjects where the said expectations are created by the aforementioned decisions.