9. COURTS. THE PROSECUTION SERVICE

9.1. COURTS

9.1.1. The constitutional mission of the judiciary

The administration of justice as the function of courts (Paragraph 1 of Article 109 of the Constitution)

The Constitutional Court's ruling of 21 December 1999

Paragraph 1 of Article 109 of the Constitution prescribes that, in the Republic of Lithuania, justice is administered only by courts. The administration of justice is a function of courts and it determines both the place of the judiciary in the system of institutions of state power and the status of judges. No other state institution or official may carry out this function.

The judiciary

The Constitutional Court's ruling of 28 March 2006

In the Republic of Lithuania, justice is administered only by courts (Paragraph 1 of Article 109 of the Constitution).

Courts – jurisdictional institutions – exercise judicial power, which, as well as the legislative and executive branches, is a fully fledged branch of state power and one of the branches of state power consolidated in the Constitution. The administration of justice is the mission and constitutional competence of the judicial branch.

The judicial branch differs from other branches of state power, *inter alia*, by the fact that it is formed on a professional, but not on a political basis (rulings of 21 December 1999 and 12 July 2001 and the conclusion of 31 March 2004).

Public trust in courts as a condition for the effective activity of the judiciary

The Constitutional Court's ruling of 27 November 2006

Courts, being among state institutions implementing state power, i.e. judicial power in particular, and administering justice, must act so that the public would have trust in them. Public trust in courts is an important element of a democratic state under the rule of law and of an open, just, and harmonious civil society and an important condition for the effective activity of the judiciary. Public trust in courts is determined by various factors, *inter alia*, the qualification of judges, their professionalism, their ability to decide cases following not only laws, but also law, the ensuring of the due process of law, respect for persons participating in the proceedings, the rational legal argumentation (reasoning) of court final acts, the clarity of court final acts to persons participating in a case, etc. Judges must also meet very strict ethical and moral requirements: their reputation must be impeccable; the conduct of a judge – both related to the direct performance of his/her duties and not related to his/her official duties – should not raise any doubts about his/her impartiality and independence; a judge must fulfil his/her duties and behave in such a manner that his/her conduct would not discredit the name of judges.

The administration of justice as the function of courts (Paragraph 1 of Article 109 of the Constitution)

The Constitutional Court's ruling of 25 September 2012

The Constitutional Court, while interpreting Paragraph 1 of Article 109 of the Constitution, which provides that, in the Republic of Lithuania, justice is administered only by courts, has held more than once (*inter alia*, the rulings of 21 December 1999, 9 May 2006, 6 June 2006, 27 November 2006, 24 October 2007, and 21 January 2008) that courts, while administering justice, must ensure the implementation of the rights established in the Constitution, laws, and other legal acts, and they must guarantee the supremacy of law and protect human rights and freedoms. Paragraph 1 of Article 109 of the Constitution gives rise to the duty of courts to consider cases in a fair and objective manner and to adopt reasoned and well-founded decisions (*inter alia*, the rulings of 15 May 2007, 17 September 2008, and 31 January 2011). The principle of justice consolidated in the Constitution, as well as the provision that justice is administered by courts, means that not the adoption of a decision as such in a court, but, rather, the adoption of a just court decision constitutes a constitutional value; the constitutional concept of justice implies not a perfunctory and nominal justice administered by a court, not the outward appearance of justice administered by a court, but, most importantly, such court decisions (other final court acts) that are not unjust according to their content. As it has been held in acts of the Constitutional Court more than once, such justice that is administered only formally by a court is not the justice that is consolidated in and protected and defended by the Constitution (*inter alia*, the rulings of 21 September 2006, 21 January 2008, and 31 January 2011).

The administration of justice as the function of courts (Paragraph 1 of Article 109 of the Constitution)

The Constitutional Court's ruling of 15 November 2013

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

The administration of justice is a function of courts and it determines both the place of the judiciary in the system of institutions of state power and the status of judges. Neither any other state institution nor any other state official may exercise this function (*inter alia*, the rulings of 21 December 1999, 13 May 2004, and 7 April 2011). Justice is administered by applying special procedural forms the purpose of which is to ensure the rights of a person in court proceedings, to facilitate the establishment of actual circumstances of a case, and to pass a just decision (ruling of 18 April 1996).

When interpreting Article 109 of the Constitution, the Constitutional Court has held on more than one occasion (*inter alia*, in the rulings of 21 December 1999, 9 May 2006, 6 June 2006, and 25 September 2012) that, in the course of administering justice, courts must ensure the implementation of law formulated in the Constitution, laws, and other legal acts, must guarantee the supremacy of law, and must protect human rights and freedoms. The constitutional concept of the administration of justice also implies that courts must decide cases only by strictly adhering to the procedural and other requirements established in laws, without overstepping the limits of their jurisdiction, and not exceeding their other powers (rulings of 16 January 2006 and 24 October 2007). Paragraph 1 of Article 109 of the Constitution gives rise to the duty of courts to decide cases in a fair and objective manner and to adopt reasoned and well-founded decisions (*inter alia*, the rulings of 15 May 2007, 17 September 2008, 31 January 2011, and 25 September 2012).

The administration of justice as the function of courts

The Constitutional Court's ruling of 6 December 2013

The administration of justice is a function of courts, determining the place of this branch of power in the system of institutions of state power (*inter alia*, the rulings of 21 December 1999, 13 May 2004, and 16 January 2006). When administering justice, courts must ensure the implementation of the law that is

expressed in the Constitution, laws, and other legal acts, they must guarantee the superiority of law and protect human rights and freedoms. Under the Constitution, courts are under the duty to decide cases in a fair and objective manner and to adopt reasoned and well-founded decisions (*inter alia*, the rulings of 15 May 2007, 21 January 2008, and 10 April 2009).

The principle of justice consolidated in the Constitution, as well as the provision that justice is administered by courts, means that not the adoption of a decision as such in a court, but rather the adoption of a just court decision constitutes a constitutional value; the constitutional concept of justice implies not a perfunctory and nominal justice administered by a court, not the outward appearance of justice administered by a court, but such court decisions that are not unjust according to their content; such justice that is administered by a court only in a perfunctory manner is not the justice that is consolidated in and protected and defended by the Constitution (*inter alia*, the rulings of 21 September 2006 and 25 September 2012 and the decision of 3 July 2013).

In its jurisprudence, the Constitutional Court has held on more than one occasion that it is not allowed to establish such a legal regulation that would prevent a court from adopting a just decision in a case and, thus, from administering justice where the court takes into account all important circumstances of a case, follows law, and does not violate the imperatives of justice and reasonableness stemming from the Constitution; otherwise, the powers of a court to administer justice, which stem, *inter alia*, from Article 109 of the Constitution, would be limited or even denied, and the constitutional concept of courts as the institution administering justice in the name of the Republic of Lithuania, as well as the constitutional principles of a state under the rule of law and justice, would be deviated from (*inter alia*, the rulings of 21 September 2006, 31 January 2011, and 6 December 2012).

9.1.2. The systems of courts

The systems of courts

The Constitutional Court's ruling of 28 March 2006

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 certain laws) systems of courts.

The system of courts of general jurisdiction

The Constitutional Court's ruling of 28 March 2006

Under the Constitution, the system of courts of general jurisdiction, as a system of institutions, is comprised of courts that belong to four different levels: the first (lowest) level is comprised of district courts, the second level is comprised of regional courts, the third level is comprised of the Court of Appeal of Lithuania, and the fourth (supreme) level is comprised of the Supreme Court of Lithuania. The legislature, taking account of the Constitution, has the discretion to establish as many district and regional courts as necessary in its opinion, to determine such a number of the positions of judges in those courts that, in its opinion, is necessary in order to administer justice properly and on time, and to determine such territorial boundaries of the activity of district and regional courts that, in its opinion, are necessary in order to administer justice properly and on time.

The Constitution (*inter alia*, Paragraph 1 of Article 111 thereof) not only establishes a four-level system of courts of general jurisdiction (as a system of institutions), but also consolidates the foundations for the instance system of courts of general jurisdiction as a system of procedural steps in the judicial consideration of cases. The instance system of courts of general jurisdiction, which stems from the Constitution, implies that there must be, in accordance with the established procedure, possibilities of filing a complaint against any final act of a court of general jurisdiction of the first instance with a court of general jurisdiction of at least one higher instance. The Constitutional Court has held that the mission of the instance system of courts

is to remove the possible mistakes made by courts of lower instances, to prevent any execution of injustice, and, thus, to protect the rights and legitimate interests of a person, society, and the state (ruling of 16 January 2006). Thus, the mission of the instance system of courts of general jurisdiction is to create the preconditions for courts of higher instances to correct any mistakes of the fact (i.e. of the establishment and assessment of legally significant facts) or of the law (i.e. of the application of law), which for some reasons could be made by a court of lower instance, and to prevent the execution of injustice in any civil case, criminal case, or a case of another category considered by courts of general jurisdiction. The said correction of mistakes made by courts of lower instance and the related prevention of injustice is a *conditio sine qua non* for the trust of parties in the respective cases and for public trust in general not only in the court of general jurisdiction that considers the case in question, but also in the whole system of courts of general jurisdiction.

[…]

As such, the establishment of the four-level system of courts of general jurisdiction and the consolidation of the grounds of the instance system of courts of general jurisdiction in the Constitution does not mean that the legislature is constitutionally obliged to create, by means of a law, precisely four judicial instances (as steps in judicial proceedings and not as institutional levels), i.e. that it has to establish such a legal regulation under which it would be possible to consider any case in a district court, a regional court, the Court of Appeal of Lithuania, or the Supreme Court of Lithuania. On the contrary, in most democratic states under the rule of law, such a tradition of the instance system of courts of general jurisdiction has been developed (which is not questioned) where these courts comprise a three-step instance system: in this system, the consideration of cases is assigned to the court of first instance, the court of appeal instance (where facts that are important for the decision of a case are, *inter alia*, investigated and assessed anew), and the court of cassation instance (where no facts that are important for the decision of a case are newly established, because this has already been done by the court of appeal instance, but the issues on the application of law are decided anew). Precisely this three-step instance system of courts of general jurisdiction is established by law in Lithuania. It should be noted that, under the Constitution, the legislature has the discretion to establish (by following, *inter alia*, expediency reasons) which civil cases, criminal cases, or cases of other categories must be considered in district courts as first instance courts and which of them must be considered in regional courts as first instance courts; the legislature has also a certain degree of discretion to establish (by following, *inter alia*, expediency reasons) whether appeal proceedings must take place only in the Court of Appeal of Lithuania or whether they may also take place in regional courts. However, under the Constitution, it is not allowed to establish any such a legal regulation or to form any such case law that would eliminate the essential difference among legal proceedings in a court of first instance, legal proceedings in a court of appeal instance, and/or legal proceedings in a court of cassation instance; nor is it allowed to establish any such a legal regulation or to form any such case law that would deny the constitutional nature of the Court of Appeal of Lithuania, as a court of appeal instance, and/or the Supreme Court of Lithuania, as a court of cassation instance.

[…]

The constitutional concept of the administration of justice and that of courts of general jurisdiction imply that a law must establish such a legal regulation that every court of general jurisdiction of certain instance would perform under the law precisely such functions that are typical of courts of general jurisdiction of that instance. In this context, it should be noted that the Constitutional Court held in its ruling of 16 January 2006 that the legislature must, by means of a law, establish such powers (jurisdiction) of all courts of general jurisdiction of all instances that would be constitutionally justifiable and that the constitutional concept of the administration of justice also implies that courts must solve cases only by strictly following procedural and other requirements, which are established in laws, and by not overstepping the limits of their jurisdiction or exceeding their other powers. Thus, according to laws, every court of general jurisdiction of certain instance must perform precisely the functions that are assigned, by means of a law, to courts of general jurisdiction of the said instance.

In this context, it should be noted that it is impossible to interpret the instance system of courts of general jurisdiction that arises out of the Constitution as hierarchal one as no court of general jurisdiction of lower instance is subordinate to any court of higher instance in the administrative or organisational aspect or in any other way: courts of general jurisdiction of first instance are subordinate neither to courts of general jurisdiction of appeal instance nor to courts of general jurisdiction of cassation instance, and the Court of Appeal of Lithuania is not subordinate to the Supreme Court of Lithuania.

The instance system of courts of general jurisdiction, which stems from the Constitution, may not be interpreted as restricting the procedural independence of courts of general jurisdiction of lower instance: even though … under the Constitution, when adopting decisions in cases of certain categories, courts of general jurisdiction of lower instance are bound by decisions of courts of general jurisdiction of higher instance – precedents in cases of the said categories, courts of general jurisdiction of higher instance (and their judges) may not interfere in cases considered by courts of general jurisdiction of lower instance or give them any instructions, either obligatory or recommendatory, on how certain cases must be decided, etc.; from the aspect of the Constitution, such instructions (whether obligatory or recommendatory) given by certain courts (judges) would be regarded as acting *ultra vires*. Under the Constitution, case law is formed only when courts decide cases themselves. A different interpretation of the provisions of the Constitution consolidating the instance system of courts of general jurisdiction, as well as a legal regulation based on such different interpretation of the provisions of the Constitution, would create the preconditions for courts of general jurisdiction of higher instance (or their judges) to assume such functions that are not envisaged for them and such powers that are not established in the Constitution, would deny the independence of courts, which is consolidated in the Constitution, would violate the provision of Paragraph 2 of Article 109 of the Constitution, whereby, when administering justice, judges and courts are independent, and the provision of Paragraph 3 of this article, whereby, when considering cases, judges obey only the law. It should also be noted that the giving of obligatory or recommendatory instructions to courts of general jurisdiction of lower instance on how certain cases must be decided etc. would also restrict the possibilities of courts of general jurisdiction of higher instance to independently and impartially review, where necessary, certain cases under appeal and cassation procedure.

Paragraph 4 of Article 111 of the Constitution provides that the formation and competence of courts is established by the Law on Courts. Thus, the Constitution not only obliges the legislature to lay down, by means of a law, the establishment and competence of all the courts of the Republic of Lithuania (thus, including the status, formation, exercise of powers (activity), and guarantees of courts of general jurisdiction, the status of judges of these courts, etc.), which are specified in Paragraph 1 of Article 111 of the Constitution, but also *expressis verbis* consolidates the title of this law – the Law on Courts. At the same time, it needs to be noted that, in itself, such a constitutional legal regulation does not mean that certain relationships connected with the aforesaid relationships may not in general be regulated also by means of other laws. However, it should be emphasised that, when regulating the said relationships by means of a law, the legislature must pay regard to the Constitution and, *inter alia*, the constitutionally consolidated foundations of the instance system of courts of general jurisdiction.

Specialised courts

The Constitutional Court's ruling of 28 March 2006

Paragraph 2 of Article 111 of the Constitution provides that, for the consideration of administrative, labour, family, and cases of other categories, specialised courts may be established. It should also be mentioned that no courts with extraordinary powers may be established in the Republic of Lithuania in time of peace (Paragraph 3 of Article 111 of the Constitution).

It should be noted that, when regulating the relationships connected with the establishment and activity of specialised courts, the legislature is bound by the provisions of the Constitution that establish the grounds for the instance system of courts. In this context, it should be emphasised that, as the Constitutional Court held in its ruling of 16 January 2006, the Constitution, *inter alia*, Paragraphs 1 and 2 of Article 111 thereof

(but not exclusively these provisions of the Constitution), consolidates the instance system of courts. The Constitution, if its provisions are interpreted in a systemic manner, implies that the instance system is established not only for courts of general jurisdiction, but also for specialised courts, which are established under Paragraph 2 of Article 111 of the Constitution.

The legislature, while paying regard to the Constitution, has broad discretion to decide (by following, *inter alia*, expediency reasons) on the establishment of specialised courts for consideration of particular categories of cases. The legislature also has broad discretion in establishing the system of specialised courts assigned to the consideration of each category of cases, the number of positions of judges in those courts and their relations with courts of general jurisdiction and with specialised courts assigned to the consideration of cases of other categories, *inter alia*, the fact whether certain specialised courts, assigned to the consideration of cases of certain categories, would constitute an autonomous system, which would be separated from the system of courts of general jurisdiction and from the system of specialised courts assigned to the consideration of cases of other categories, or whether it would somehow be linked with such systems (one of them) in organisational, procedural, or some other aspect. It should be noted that the instance system of specialised courts (established under Paragraph 2 of Article 111 of the Constitution) may have certain particularities compared with the instance system of courts of general jurisdiction.

However, under the Constitution, the legislature may not create any such system or systems (if there are more than one category of cases for the consideration of which individual specialised courts are created) of specialised courts (established under Paragraph 2 of Article 111 of the Constitution) that would replace the system of courts of general jurisdiction imperatively established in the Constitution and would take most of the functions of the system of courts of general jurisdiction.

It should be emphasised that the imperatives (which stem from the Constitution and were discussed in this ruling of the Constitutional Court) of both the activity of courts of general jurisdiction and the legal regulation governing such activity are also *mutatis mutandis* applicable to the activity of specialised courts (established under Paragraph 2 of Article 111 of the Constitution) and the legal regulation governing their activity. This can be said about such requirements arising out of the Constitution that are related, *inter alia*: to ensuring the possibility of filing a complaint with a court of at least one higher instance against a final court act in accordance with the established procedure; to developing uniform case law (based on the maxim that the same (analogous) cases must be decided in the same way) and the predictability of court decisions arising from this, thus, also to the continuity of the jurisprudence of courts; to the fact that the existing precedents are binding on courts themselves (*inter alia*, on courts of the supreme instance); to the modification of case law and the creation of case law precedents only when this is unavoidably and objectively necessary and by arguing it properly (clearly and rationally) in all cases; to the obligation of every court of a certain instance to perform, pursuant to laws, precisely such functions that are assigned to the courts of that instance and not to overstep the limits of their jurisdiction or exceed their other powers; to the fact that courts of lower instance are not subordinate in an organisational or another manner to any court of higher instance, as well as to procedural independence and the formation of case law when courts decide cases by themselves, etc.

It should also be emphasised that the legislature, when establishing specialised courts, must also establish a procedure under which jurisdictional competition between specialised courts and courts of general jurisdiction, as well as between specialised courts assigned for the consideration of cases of a certain category and specialised courts assigned for the consideration of cases of a different category (if there is more than one category of cases for the consideration of which individual specialised courts are established) would be decided. Moreover, the legislature must establish such a legal regulation that would not only ensure the formation of uniform case law in any individual systems of specialised courts assigned to the consideration of cases of a certain category, but would also not allow inconsistences and irregularities to appear between specialised courts and courts of general jurisdiction, as well as between specialised courts assigned to the consideration of cases of a certain category and specialised courts assigned to the consideration of cases of a different category (if there is more than one category of cases for the consideration of which individual

specialised courts are established). The inconsistency and irregularity of case law between specialised courts and courts of general jurisdiction, as well as between specialised courts assigned to the consideration of cases of a certain category and specialised courts assigned to the consideration of cases of a different category (if there is more than one category of cases for the consideration of which individual specialised courts are established), could be avoided, *inter alia*, by means of such a legal regulation (establishing the jurisdiction of courts) where cases of certain categories may be considered only in clearly specified courts of general jurisdiction or specialised courts and may not be considered in both courts of general jurisdiction and specialised courts, or in both specialised courts assigned to the consideration of cases of a certain category and specialised courts assigned to the consideration of cases of a different category (if there is more than one category of cases for the consideration of which individual specialised courts are established).

The systems of courts

The Constitutional Court's ruling of 9 May 2006

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 certain 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, namely, 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, and 28 March 2006).

Links among the systems of courts

The Constitutional Court's ruling of 6 June 2006

… 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, as 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 judicial systems – the Constitutional Court, when carrying out constitutional judicial control, as well as courts of general jurisdiction and specialised courts (established under Paragraph 2 of Article 111 of the Constitution) – are separated in the Constitution.

9.1.3. The independence of judges and courts and the guarantees of their independence

The independence of judges and courts

The Constitutional Court's ruling of 21 December 1999

Paragraph 2 of Article 109 of the Constitution prescribes: “When administering justice, judges and courts shall be independent.”

The independence of judges and courts is one of the essential principles of a democratic state under the rule of law. The role of the judiciary in such a state means that, when administering justice, courts must ensure the implementation of the law that is expressed in the Constitution, laws, and other legal acts; they must guarantee the superiority of law and protect human rights and freedoms.

It needs to be noted that the independence of judges and courts is not an objective in itself – it is a necessary condition of the protection of human rights and freedoms. Paragraph 1 of Article 30 of the Constitution provides that a person whose constitutional rights or freedoms are violated has the right to apply to a court. Paragraph 2 of Article 31 of the Constitution consolidates the right of a person charged with committing a crime to a public and fair hearing of his/her case by an independent and impartial court. Therefore, the fact that independence is not a privilege but one of the most important duties of judges and courts, which stems from the human right guaranteed in the Constitution to have an impartial arbiter of a dispute and which is a necessary condition for an impartial and fair consideration of a case, is the most important criterion that must be followed when assessing the independence of judges and courts (ruling of 6 December 1995).

Taking account of the striving, enshrined in the Preamble to the Constitution, for an open, just, and harmonious civil society and a state under the rule of law, Article 5 of the Constitution, as well as the norms of other articles thereof establishing the separation of powers, it is possible to distinguish two inseparable aspects of the principle of the independence of judges and courts.

This principle, first of all, means the independence of both judges and courts that administer justice. Under Article 109 of the Constitution, when considering cases, judges are independent and obey only the law. Paragraph 1 of Article 114 of the Constitution provides that interference by any institutions of state power and governance, members of the Seimas or other officials, political parties, political or public organisations, or citizens with the activities of a judge or court is prohibited and leads to responsibility provided for by law. The procedural independence of judges is a necessary condition for an impartial and fair consideration of a case.

On the other hand, judges and courts are not sufficiently independent if the independence of courts as the system of the institutions of the judiciary is not ensured. According to the principle of the separation of powers, all branches of power are autonomous, independent, and capable of counterbalancing one another. The judiciary, being independent, may not be dependent on the other branches of power also because of the fact that it is the only branch of power formed on a professional, but not a political basis. The judiciary may implement its function, which is the administration of justice, only while being autonomous and independent of the other branches of power.

The fact that the judiciary is fully fledged and independent implies its self-governance. The self-governance of the judiciary also includes the organisation of the work of courts and the activities of the professional corps of judges.

The organisational independence of courts and their self-governance are the main guarantees of the actual independence of the judiciary. The constitutional duty of other state institutions is to respect the independence of courts, which is established in the Constitution. It needs to be noted that the activities of courts are guaranteed by the Constitution, as well as by laws and other legal acts that are in conformity with the Constitution. The state is under the duty to create proper work conditions for courts. However, this does not mean that it is allowed, in the course of establishing particular powers of other state institutions as regards their relationships with the judiciary, to deny both the separation of powers established in the Constitution and the essence of the judiciary as a fully fledged branch of power, which acts independently from other branches of power.

While ensuring the independence of judges and courts, it is very important to clearly separate the activity of courts from that of the executive. The Constitution prohibits the executive from interfering with the administration of justice, from exerting any influence on courts or from assessing the work of courts

regarding the consideration of cases, let alone giving instructions as to how justice must be administered. The supervision of courts and the application of disciplinary measures to judges must be organised in such a manner that the actual independence of judges would not be undermined.

Under the Constitution, the activity of courts is not and may not be considered an area of the administration by any institution of the executive. Only the powers designated to create conditions for the work of courts may be granted to institutions of the executive. Courts are not accountable for their activities in administering justice to any other state institutions or any officials. It is only an independent institutional system of courts that may guarantee the organisational independence of courts and the procedural independence of judges.

The material basis of the organisational independence of courts is their financial independence of any decisions of the executive. It needs to be noted that the financial independence of courts is ensured by such a legal regulation where finances for the system of courts and every court are allocated in the state budget that is approved by means of a law. The guarantee of the organisational independence of courts is one of essential conditions for ensuring human rights.

Judges are also obligated to be independent by their oath that they must take before entering office under Paragraph 6 of Article 112 of the Constitution. Judges take an oath to be faithful to the Republic of Lithuania, to administer justice only according to the law, to defend human rights, freedoms, and legitimate interests, to act honestly and humanely all the time, and to never let their conduct discredit the name of judges.

Under Article 115 of the Constitution, the judges of the courts of the Republic of Lithuania are released from their duties according to the procedure established by law when their conduct discredits the name of judges, and upon the entry into effect of court judgments convicting them. Articles 74 and 116 of the Constitution also provide that for a gross violation of the Constitution or a breach of the oath, or when they are found to have committed a crime, the President and justices of the Supreme Court, as well as the President and judges of the Court of Appeal, may be removed from office by the Seimas according to the procedure for impeachment proceedings. The conduct of a judge – both related to the direct performance of his/her office and not related to his/her official duties – should not raise any doubts about his/her impartiality and independence.

The qualification of judges is another guarantee that judges will administer justice in a proper manner: only persons with high legal qualification and considerable life experience may be appointed as judges. Their reputation must be impeccable.

This means that judges are subject to special professional and ethical requirements. Judges must bear great responsibility for how they administer justice, i.e. perform the obligation established for them in the Constitution.

The independence of judges and courts (Article 109 of the Constitution)

The Constitutional Court's ruling of 12 July 2001

Paragraph 1 of Article 109 of the Constitution prescribes that, in the Republic of Lithuania, justice is administered only by courts. The function of the administration of justice determines the independence of judges and courts. Paragraphs 2 and 3 of Article 109 of the Constitution provide that, when administering justice, judges and courts are independent and that, when considering cases, judges obey only the law. Thus, a judge can administer justice only while being independent of parties to the case, state institutions, officials, political and public associations, natural and legal persons.

When analysing the principle of the independence of judges and courts, it must be noted that independence is not a privilege, but one of the most important obligations of judges and courts, which stems from the right of a person, which is guaranteed in the Constitution, to an independent and impartial arbiter of a dispute. All state institutions must respect and ensure this right of a person guaranteed by the Constitution. This circumstance must be taken into account when guarantees of the independence of judges and courts are assessed.

The independence of judges is ensured by establishing the inviolability of the term of their office, the inviolability of the person of a judge, the guarantees of a social (material) nature of a judge, by consolidating the self-governance of fully fledged judicial power and its financial and technical provision (rulings of 6 December 1995, 18 April 1996, 19 December 1996, 5 February 1999, 21 December 1999, and 21 December 1999 and the decision of 12 January 2000).

[…]

The principle of the independence of judges and courts, which is enshrined in the Constitution, means that the legislature is under the duty to provide for such guarantees of the independence of judges and courts that would ensure the impartiality of courts in adopting decisions and that would not permit anyone to interfere with activities of judges or courts when they administer justice.

The specific function of courts and the principle of the independence of judges and courts, which are consolidated in the Constitution, also determine the legal status of judges. It needs to be noted that the judiciary is formed on a professional, but not on a political basis. "According to the duties performed, judges may not be deemed to be state servants. No one may demand that they follow a certain political guideline. The judicial practice (case law) is formed only by courts while applying the norms of law. Judges ensure human rights and freedoms in that they administer justice on the grounds of the Constitution and laws" (ruling of 21 December 1999).

[…]

The principle of a state under the rule of law, the separation of powers, and the independence of judges and courts are not objectives in themselves. Their meaning is disclosed by the protection of human rights, the ensuring of social harmony, and the legal solution of conflicts arising in society. Judges consider cases that involve the interests of an employee and an employer, a citizen and an official, an entity indulged in commercial activities and a consumer, a person and the state. It is especially important to guarantee impartial judicial protection against unlawful actions of state institutions and officials. This once again confirms the importance of guarantees for the independence of judges and courts.

In addition, the Constitutional Court notes that the system of the guarantees of the independence of judges and courts does not create any preconditions on the grounds of which judges could evade the proper fulfilment of their duties, investigate cases in a negligent manner, act unethically with persons taking part in a case, or violate human rights and dignity. Judges must protect the honour and prestige of their profession. Therefore, the system of self-regulation and self-governance of the judiciary must ensure that judges perform their duties properly and that every unlawful or unethical conduct of a judge be properly assessed.

The incompatibility of the office of a judge with another office or employment as a guarantee of the independence of judges (Paragraph 1 of Article 113 of the Constitution)

The Constitutional Court's ruling of 12 July 2001

Paragraph 1 of Article 113 of the Constitution consolidates the incompatibility of the office of a judge with any other elective or appointive office, as well as with employment in any business, commercial, or private establishment or enterprise. Judges may receive only the remuneration of a judge paid from the state budget. Judges may not receive any remuneration other than the remuneration established for them and payment for educational or creative activities.

The incompatibility of the post of a judge with another office or employment is determined by the special legal situation of a judge, as well as the judiciary, as a branch of state powers. The established prohibition is aimed at ensuring the independence and impartiality of judges, which are necessary conditions for the implementation of justice. At the same time, it needs to be noted that the incompatibility of the office of a judge with any other office or employment implies the duty of the state to establish such remuneration and social guarantees of judges that would be in line with the dignity of judges and their professional status.

The prohibition on interfering with the activity of judges or courts (Paragraph 1 of Article 114 of the Constitution)

The Constitutional Court's ruling of 12 July 2001

Paragraph 1 of Article 114 of the Constitution prescribes: "Interference by any institutions of state power and governance, Members of the Seimas or other officials, political parties, political or public organisations, or citizens with the activities of a judge or court shall be prohibited and shall lead to liability provided for by law."

The prohibition against the interference with the activities of judges or courts established in Paragraph 1 of Article 114 of the Constitution is aimed at ensuring the independence and impartiality of judges. Courts are able to administer justice only when judges can consider cases impartially, by taking account of the circumstances of cases and the requirements of laws. It needs to be noted that, under the Constitution, institutions of state power and administration are not only prohibited from exerting influence on judges and courts – they are also obligated to ensure the independence of judges and courts.

The immunity of judges as a guarantee of the independence of judges (Paragraph 2 of Article 114 of the Constitution)

The Constitutional Court's ruling of 30 May 2003

The immunity of judges is one of the guarantees (consolidated in the Constitution) of the independence of judges. Paragraph 2 of Article 114 of the Constitution provides that judges may not be held criminally liable or be detained, or have their liberty restricted otherwise, without the consent of the Seimas or, in the period between the sessions of the Seimas, without the consent of the President of the Republic of Lithuania.

The interaction between the judiciary and other branches of state power

The Constitutional Court's ruling of 9 May 2006

The autonomy and independence of judicial power does not mean that it and other state powers – legislative power and executive power – may not cooperate. The Constitutional Court has held that when the general functions and tasks of the state are being accomplished, there exists interfunctional partnership, as well as reciprocal control and balance, among state institutions (rulings of 10 January 1998 and 21 April 1998).

It should be emphasised that the interaction among the branches of state power may not be treated as their conflict or competition; thus, the checks and balances that the judicial branch (institutions thereof) and other branches of state power (institutions thereof) have towards each other may not be seen as the mechanisms of the opposition of the branches of power. The model of reciprocity among state powers consolidated in the Constitution is also described by the reciprocal control and balance of the branches of state power (institutions thereof); such reciprocal control and balance does not allow a certain branch of state power to dominate in respect of another branch of state power (or in respect of other branches of state power); the said model of reciprocity is also described by cooperation among the branches of state power, of course, where such cooperation does not overstep the limits established in the Constitution, i.e. without interfering with the implementation of the powers of another branch of state power.

The inviolability of the term of powers as a guarantee of the independence of judges

The Constitutional Court's ruling of 9 May 2006

One of the guarantees of the independence of judges, which is consolidated in the Constitution, is the guarantee of the term of their powers (rulings of 6 December 1995, 21 December 1999, and 12 July 2001). Only an independent court, i.e. only such a court the judges of which are guaranteed the inviolability of the term of their powers, may be regarded as a court that administers justice as required by the Constitution. The guarantee of the inviolability of the term of powers of a judge is also important because of the fact that a

judge, whatever political forces are in power, must remain independent and must not adjust to the possible change of political forces. The situations when a judge may be released from duties, as well as the grounds for his/her release from duties, are consolidated in Article 115 of the Constitution (as well as Articles 74 and 116 of the Constitution, which provide for the possibility of dismissing justices of supreme and high courts under impeachment proceedings). It needs to be emphasised that this list of the grounds for releasing judges from duties is a comprehensive (exhaustive) one – it may not be amended or supplemented by means of a law.

[…]

It should be noted that the principle of the independence of judges, which is consolidated in the Constitution, implies only such a legislative regulation of the term of powers of judges where, when appointing a judge, he/she would know his/her term of powers (until the time established by means of a law or until he/she reaches the pensionable age established by means of a law). Thus, the term of powers of a judge must not depend on any future free-discretion decisions adopted by such state power institutions that have appointed him/her as a judge.

The legal regulation governing the relationships connected with the remuneration of judges (Paragraph 1 of Article 113 of the Constitution)

The Constitutional Court's decision of 8 August 2006

… The notion "remuneration of judges" includes all payments paid to a judge from the state budget (decision of 12 January 2000). Under the Constitution, the remuneration of judges must be established by means of a law, its amount, as well as the material and [other] social guarantees established for judges, must be such that they would be in line with the constitutional status of judges and their dignity, the remuneration of judges, the material and social guarantees established for them may be differentiated according to clear criteria that are known *ex ante* and are not related to the administration of justice when cases are decided (for example, according to the length of time during which a person works as a judge), and the remuneration of judges may not depend upon the results of their work. It should be noted that, as the Constitutional Court has emphasised in its rulings more than once, the Constitution prohibits the reduction of the remuneration and [other] social guarantees of judges; any attempts to reduce the remuneration of judges or their other social guarantees, or any limitation upon the financing of courts should be treated as an encroachment upon the independence of judges and courts (rulings of 6 December 1995 and 21 December 1999, the decision of 12 January 2000, and the rulings of 12 July 2001 and 28 March 2006).

The independence of judges and courts

The Constitutional Court's ruling of 27 November 2006

The independence and impartiality of judges and courts are ensured by consolidating, in the Constitution and laws, the independence of the system of courts from the legislature and the executive (institutional independence), by consolidating the procedural independence of judges, the organisational self-dependence and self-governance of courts, the status of judges, the inviolability of the person of a judge, the immunities of judges, the inviolability of the duration of the term of office of judges, the social (material) guarantees of judges, and by consolidating the prohibition against any interference with the activity of judges or courts by state institutions, members of the Seimas, other officials, political parties, political and public organisations, as well as citizens. The independence and impartiality of judges and courts are also ensured by means of other guarantees established in the Constitution and laws.

The protection of the remuneration and other social guarantees of judges (Article 109, Paragraph 4 of Article 111, and Paragraph 1 of Article 113 of the Constitution)

The Constitutional Court's ruling of 22 October 2007

… as the Constitutional Court held in its ruling of 12 July 2001, a judge, who is obligated to consider conflicts arising in society as well as those between a person and the state, must be not only highly professionally qualified and of impeccable reputation, but also materially independent and feel secure as to his/her future. The imperative of the constitutional protection of the remuneration and other social (material) guarantees of judges stems from the principle of the independence of judges and courts, which is consolidated in the Constitution (*inter alia*, Article 109 thereof); through this principle, attempts are made to protect judges administering justice against both any influence of the legislative and executive branches and any influence of other state establishments and officials, political and public organisations, commercial and economic structures, as well as other legal and natural persons. In its ruling of 12 July 2001, the Constitutional Court also noted that the state has the duty to establish such salaries for judges that would be in conformity with the status of the judiciary and judges, with the functions performed by them, as well as with their responsibility.

The social (material) guarantees of the principle of the independence of judges that stem from the Constitution (which, actually, are also consolidated in the law of other democratic states, as well as in various international acts) mean that the state has the duty to ensure such social (material) provision for judges that would be in conformity with the status of judges while they are in office, as well as upon the expiry of their term of office, i.e. their term of powers (ruling of 21 December 1999). Under the Constitution, the material and social guarantees established for judges must be such that they would be in line with the constitutional status of judges and their dignity (decision of 8 August 2006).

Thus, it should be held that the legislature must establish such a legal regulation that would ensure the independence of judges and courts, *inter alia*, the social (material) guarantees of judges not only when they are in office, but also after their powers cease. In doing so, the legislature must pay regard to the norms and principles of the Constitution. When the powers of a judge cease, his/her social (material) guarantees may be varied ones, *inter alia*, payments paid periodically, as well as one-off payments, etc. The constitutional grounds for establishing such guarantees is the exceptional constitutional status of judges, which is determined by the function of the administration of justice; therefore, the said guarantees may only depend upon such circumstances that are linked with the constitutional status of judges, but they may not be regarded as replacing other social (material) guarantees that must be ensured for former judges on other grounds, including those that are common to all working persons. It also needs to be emphasised that the social (material) guarantees of judges after their powers cease must be real and not merely nominal.

[…]

… if the legislature establishes such a social (material) guarantee of judges after their powers cease as the pension of judges, it, having regard to the Constitution, may also establish cases where the pension of judges (which is related to the constitutional status of judges) is not granted to former judges and/or where granted state pensions of judges are no longer paid to former judges.

It needs to be emphasised in particular that all such cases must be based on the Constitution; while establishing, by means of a law, cases where the pension of judges is not granted to a former judge, it is necessary to take account, *inter alia*, of the constitutional grounds of the cessation of the powers of such a judge. Otherwise, the constitutional principle of the independence of judges and courts, which implies the social (material) guarantees of judges after their powers cease, would be disregarded and Article 109 of the Constitution would be violated.

Article 109 of the Constitution would equally be violated where a granted state pension of judges is no longer paid to a former judge in the absence of constitutionally justifiable grounds.

… if the legislature consolidates such a social (material) guarantee of judges after their powers cease as the pension of judges, this guarantee is defended not only under Article 109 of the Constitution, but also under Article 52 of the Constitution.

The principle of the equal legal status of judges; the differentiation of the social (material) guarantees of judges; the imperative of the reality of the social (material) guarantees of judges

The Constitutional Court's ruling of 22 October 2007

… One of the important aspects of the independence of judges as consolidated in the Constitution is that, while administering justice, all judges have an equal legal status, *inter alia*, from the aspect that no different guarantees of the independence of judges while administering justice (deciding cases) may be established; while administering justice, judges are not and may not be subordinate to any other judge or to the president of any court (*inter alia*, of the court where they work, as well as of any court of a higher level or instance); on the other hand, the principle of the equal legal status of judges does not mean that the material and social guarantees of judges may not be differentiated according to clear criteria that are known *ex ante* and are not related to the administration of justice when cases are decided (for example, according to the length of time during which a person works as a judge) (ruling of 9 May 2006 and the decision of 8 August 2006). The principle of the equal legal status of judges, which stems from the Constitution, may also not be interpreted as not permitting an additional payment for the judges – the heads of courts (their deputies, chairpersons of divisions, etc.) who perform additional functions for organisational work that they carry out, since supplementary work must be paid for additionally.

[…]

The equal status of judges while administering justice, which stems from the Constitution, should be interpreted by taking account of the fact that, under the Constitution, the system of courts of general jurisdiction, as a system of institutions, is comprised of courts that belong to four different levels: the first (lowest) level is comprised of district courts, the second level is comprised of regional courts, the third level is comprised of the Court of Appeal of Lithuania, and the fourth (supreme) level is comprised of the Supreme Court of Lithuania. … Moreover, interpreting the equal status of judges when they administer justice, where the said status stems from the Constitution, account must be taken of the fact that, under the Constitution, courts are classed as belonging not to one, but to two or more (if that, while having regard to the Constitution, is established in laws) systems of courts (… there are three systems of courts at present).

The classification of courts (which arises from the Constitution) by which courts belong not to one but to several (at present – three) systems of courts, as well as the division of the system of courts of general jurisdiction and specialised courts (established under Paragraph 2 of Article 111 of the Constitution) into levels, implies that the legislature has the powers to differentiate the social (material) guarantees of judges (remuneration, as well as guarantees that are established for (applied to) judges after their powers cease). … judicial power is formed on a professional basis. It is universally recognised (not exclusively in Lithuania) that the dominant principle of the formation of the corps of judges of courts of higher level is the principle of the professional career of judges when judges are promoted after they are released from previous duties and appointed as judges of courts of higher level (even though the said principle must not be made absolute in order not to create preconditions for the system of courts to become too closed, to become subjected to routine, etc.) (ruling of 9 May 2006). The professional career of judges is inseparably related to the institution of the promotion of judges, which is consolidated in Paragraph 4 of Article 112 of the Constitution. While deciding on the promotion of judges, *inter alia*, their qualification – professional preparation – is assessed (ruling of 9 May 2006). Thus, the implementation of the principle of the professional career of judges (as mentioned before, without making it absolute) is one of the conditions making it possible to ensure that persons with professional qualification as high as possible would be appointed as judges of courts of higher levels, thus, also to ensure that justice would be administered in such a way that is provided for in the Constitution, that human rights and freedoms, as well as other constitutional values, would be protected and defended properly, and that the law expressed in the Constitution, as well as in laws and other legal acts that are not in conflict with the Constitution, would be implemented. Thus, judges must also have material incentives to pursue a professional career. Consequently, the legislature not only may, but also must, differentiate the social (material) guarantees of judges according to the fact that, in establishing such guarantees, account is taken of the court system and the court level where judges work; the constitutional concept of the judiciary as the branch of state power formed on a professional basis implies, *inter alia*, that, if the remuneration of judges of courts of different levels, as well as guarantees that are

established for (applied to) judges after their powers cease, were equalised completely, not only the fact that, under the Constitution, courts are classed as belonging not to one, but to several (at present – three) systems of courts, that the system of courts of general jurisdiction, as a system of institutions, is comprised of courts that belong to four different levels, and that the systems of specialised courts (at present – administrative courts), which are established under Paragraph 2 of Article 111 of the Constitution, may also be divided into levels, would be disregarded, but also there would be no material incentives (even if there were other incentives) for judges to pursue the professional career.

The principle of the equal legal status of judges, which stems from the Constitution, implies that judges of the same system of courts and judges of courts of the same level are equal while administering justice (deciding cases) not only according to their powers and their non-subordination to any other judge or president of any court (*inter alia*, of the court in which they work, as well as of the court of higher level or instance), their responsibility and immunities, the restrictions on their activities and the limitation on their remuneration provided for in Article 113 of the Constitution, but also according to the fact that they must be ensured equal workload; thus, judges of the same system of courts and judges of courts of the same level must be paid for work accordingly without discriminating any of them and without giving privileges to any of them, and the respective social (material) guarantees, which may not be discriminatory and may not be privileges, must be established for them.

It also needs to be noted that, as mentioned before, the social (material) guarantees of judges may be differentiated (while having regard to the Constitution) under criteria that are not related to the administration of justice when deciding cases, for example, according to the length of time during which a person works as a judge. However, this does not at all mean that the criterion of the length of time during which a person works as a judge may be replaced by another, essentially different criterion (for example, if laws establish a certain calendar date (naming it directly, or relating to any legal fact, such as, for example, the entry into force of a certain legal act) and if a person begins to work as a judge or his/her powers cease from that date, certain social (material) guarantees that are established for (applied to) him/her would be different from those that are established for (applied to) other judges of courts of the same system and of courts of the same level (of courts of general jurisdiction and specialised courts, which are established under Paragraph 2 of Article 111 of the Constitution)). Thus, the remuneration of judges of courts of the same system and of the same level may not be differentiated (also by applying law) according to when the remuneration of a certain amount of judges was established (*inter alia*, according to whether a person began to work as a judge of the respective court before establishing the remuneration of a certain amount of a judge of that court, or afterwards). Consequently, under the Constitution, it is not allowed to establish such a legal regulation (neither general nor individual) where, with regard to persons who are appointed as judges of a certain court, a different (lower or higher) remuneration would be established from that of judges who already work in the said court; if such practice of the application of law came into being, it would be impossible to substantiate it constitutionally.

The provision that … social (material) guarantees of judges may be differentiated (having regard to the Constitution) according to the length of time during which a person works as a judge may not be interpreted as meaning that the criterion of the length of time during which a person works as a judge is the only criterion of the said differentiation. In the case of the remuneration of judges, as well as in the case of the social (material) guarantees of judges after their powers cease (and, thus, in the case of the pensions of judges), account must be taken of the fact that the Constitution gives rise to such classification of courts by which courts belong not to one, but, rather, to several (at the moment – three) systems of courts, as well as of the fact that the system of courts of general jurisdiction and the system of specialised courts (established under Paragraph 2 of Article 111 of the Constitution), as systems of institutions, are of several levels.

It has been held in this ruling of the Constitutional Court that the principle of the equal legal status of judges may not be interpreted as not permitting an additional payment for the judges – the heads of courts (their deputies, chairpersons of divisions, etc.) who perform additional functions for organisational work that they carry out. However, it needs to be emphasised that the said constitutional principle hardly implies that,

in a certain court, the activity of the judges – heads of courts (their deputies, chairpersons of divisions, etc.) who perform additional functions may be limited only to such organisational work that is not related to the administration of justice, i.e. with the decision of cases, and that they may receive the remuneration of a judge only for such organisational work.

The principled provision that the remuneration of judges of courts of the same system and of the same level may not be differentiated (also by applying law) according to when the remuneration of a certain amount of judges was established (*inter alia*, according to whether the person began to work as a judge of the respective court before establishing the remuneration of a certain amount of a judge of that court, or afterwards) is also *mutatis mutandis* applicable to other social (material) guarantees of judges, *inter alia*, those that are established for (applied to) judges after their powers cease. The said guarantees also may not be reduced, let alone altogether denied, in cases where their system is reorganised. In addition, the imperative of the reality of the social (material) guarantees of judges stems from the Constitution. The social (material) guarantees of judges that are established for (applied to) judges after their powers cease (in particular, if such guarantees are linked with certain periodic payments, such as pensions) could become (if an economic or social situation changed) not only unreal, but also nominal, thus, fictitious in cases where exactly such guarantees are applied to judges whose powers ceased that were established at a given time and not reviewed with respect to these judges, while other judges of courts of the same system and the same level, whose powers will expire later, are granted greater respective guarantees (in view of a changing economic or social situation). In this context, it needs to be noted that the provision of the review of the social (material) guarantees is applicable not only to judges, but also to other members of society: it has been held in this ruling of the Constitutional Court that the social orientation of the State of Lithuania, which is consolidated in the Constitution, obliges the state to pay regard to social (material) guarantees and other guarantees that stem not only from Article 52 of the Constitution, but also from other provisions of the Constitution (*inter alia*, from Paragraph 2 of Article 30, Articles 38, 39, and 41, Paragraph 1 of Article 51 and Article 146 thereof), as well as from the imperative of reality; thus, the social orientation of the State of Lithuania includes the obligation to revise once established (and applied) guarantees of the social (material) nature (to increase their sizes) in particular if an economic or social situation changes in such a way that the said established (and applied) guarantees depreciate considerably, let alone become nominal in general (in this case, it is also necessary to have in mind the reservation (which is specified in this and other rulings of the Constitutional Court) regarding the proportional and temporary reduction of payments when this is necessary for the protection of other constitutional values).

The grounds for releasing judges from duties (cessation of powers) and the influence of such grounds on establishing and applying the social guarantees of judges after their powers cease (Articles 108 and 115 of the Constitution)

The Constitutional Court's ruling of 22 October 2007

The establishment (and application) of the social (material) guarantees of judges after their powers cease must be based on the Constitution. In this context, it needs to be noted that the Constitution establishes the grounds for releasing judges from their duties. For instance, under Article 115 of the Constitution, the judges of courts of general jurisdiction and specialised courts (established under Paragraph 2 of Article 111 of the Constitution) are released from their duties according to the procedure established by law in the following cases: of their own will (Item 1); upon the expiry of the term of powers, or upon reaching the pensionable age established by law (Item 2); due to their state of health (Item 3); upon election to another office, or upon transfer, with their consent, to another place of work (Item 4); when their conduct discredits the name of judges (Item 5); upon the entry into effect of court judgments convicting them (Item 6); 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 the procedure for impeachment proceedings.

The Constitution consolidates the final list of grounds for releasing judges from their duties (i.e. the cessation of powers) and this list must not be expanded by means of laws or other legal acts (ruling of 27 November 2006).

On the other hand, it is obvious that the powers of judges may cease (expire) on various constitutional grounds.

It needs to be emphasised that the Constitution does not oblige the legislature to establish such a legal regulation where the time of the expiry of the powers of judges, which is established in the Constitution or laws, would coincide with the time when a judge reaches the pensionable age established by law: it is also allowed to establish, by means of a law, such a legal regulation whereby the term of powers of a judge may expire before he/she reaches the pensionable age established under the law, as well as such a legal regulation whereby the term of powers of a judge may expire after he/she reaches the pensionable age established under the law. While establishing the social (material) guarantees of judges after their powers cease, it is necessary to pay regard to that. In this context, it needs to be noted that two legal facts – the expiry of the term of powers of judges and the fact that a judge reaches the pensionable age established under the law – are considered in Item 2 of Article 115 of the Constitution as equal alternatives, thus, as equal grounds for the cessation of the powers of a judge; it also needs to be mentioned that Article 108 of the Constitution does not relate the cessation of the powers of a justice with any age, or with the pensionable age established by law, but only with one of the specified alternatives – with the expiry of the term of nine years, which is established in the Constitution itself (taking account of the reservation provided for in Paragraphs 2, 3 and 4 of Article 7 of the Republic of Lithuania's Law on the Procedure for the Entry into Force of the Constitution of the Republic of Lithuania, which is a constituent part of the Constitution).

Since the expiry of the term of powers and the fact that a judge reaches the pensionable age established under the law are alternative (equivalent) legal grounds for the cessation of the powers of a judge, the same (equivalent) legal consequences, *inter alia*, related to the social (material) guarantees of judges after their powers cease, must appear as a result of relevant legal facts.

[…]

The fact that, under the Constitution, before their powers expire or before they reach the pensionable age established by law, judges may be released from their duties due to their state of health may not serve as the grounds for not applying to them social (material) guarantees related to the status of judges after their powers cease where such guarantees are established for (and applied to) judges whose powers cease upon reaching the pensionable age established under the law or upon the expiry of their term of powers. Even though the legislature has a certain degree of discretion to establish social (material) guarantees for such judges (who are released from their duties due to the state of health before the expiry of their term of powers and reaching the pensionable age established by law) after their powers cease, it does not have the discretion to establish such a legal regulation whereby, from the aspect of the social (material) guarantees of judges after their powers cease, the status of judges who are released from their duties due to the state of their health before the expiry of their term of powers and before reaching the pensionable age established under the law and the status of the judges who were released from their duties upon reaching the pensionable age established under the law or upon the expiry of their term of powers would be opposed.

It needs to be emphasised that the said ground for the cessation of the powers of a judge is related not to the free decision of a judge himself/herself no longer to work as a judge and no longer to pursue the career of a judge, but to the fact that, because of the reason that does not depend on him/her – the state of his/her health – he/she cannot hold office and his/her powers must cease early. While establishing the social (material) guarantees of judges after their powers cease, the legislature may not disregard this circumstance.

Legal situations where judges, before the expiry of their term of powers and before reaching the pensionable age established by law, are released from their duties of their own will (they resign), as well as where judges are released from their duties when they are elected to another office or are transferred, with their consent, to another place of work, should be assessed differently. Such grounds of the cessation of the powers of judges are related to the free decision of judges no longer to work as a judge and no longer to pursue the career of a judge (at all or temporarily). Thus, the legislature has the discretion to establish whether the social (material) guarantees of judges after their powers cease are related, concerning such persons (who are released from the duties of a judge of their own will, who have resigned, as well as those who are released from duties after electing them to another office or when they are transferred, with their consent, to another place of work), only to the cessation of the powers of judges of such persons, or whether they are also linked with other legal facts.

It has been held in this ruling of the Constitutional Court that, if the legislature establishes such a social (material) guarantee of judges after their powers cease as the pension of judges, it, having regard to the Constitution, may also establish cases where the pension of judges (which is related to the constitutional status of judges) is not granted to former judges and/or where granted state pensions of judges are no longer paid to former judges. It has also been held that, while establishing such cases where the pension of judges is not granted to a former judge, it is necessary to take account, *inter alia*, of the constitutional grounds of the cessation of the powers of a judge.

In the Constitutional Court's ruling of 27 November 2006, it was held that "the conduct of a judge – both related to the direct performance of his/her duties and not related to his/her official duties – should not raise any doubts about his/her impartiality and independence; a judge must fulfil his/her duties and behave in such a manner that his/her conduct would not discredit the name of judges". It needs to be noted that, while establishing the social (material) guarantees of judges after their powers cease, account must be taken of the fact that the Constitution also provides for such grounds of the cessation of the powers of judges as the entry into effect of court judgments convicting them, the removal of judges from office according to the procedure for impeachment proceedings for a gross violation of the Constitution or a breach of the oath, or if they are found to have committed a crime, as well as the conduct of a judge discrediting the name of judges. Thus, a law must establish such a legal regulation that, if a judge is released from his/her duties on the said grounds, he/she loses the respective social (material) guarantees of a judge that are established for (applied to) him/her upon the expiry of his/her term of office and are related to the constitutional status a judge and his/her dignity.

It also needs to be noted that, as the Constitutional Court held in its ruling of 27 November 2006, while establishing in the Law on Courts the procedures for releasing a judge from his/her duties (taking account of, *inter alia*, the grounds (particularities thereof) for the release from his/her duties), it is necessary in all cases to pay regard to the principle of the independence of judges and courts, the presumption of innocence, as well as requirements of the due process of law and other imperatives laid down in the Constitution.

Holding judges administratively responsible (judges do not have immunity from administrative responsibility except in situations where such responsibility is related to the restriction of liberty) (Paragraph 2 of Article 114 of the Constitution)

The Constitutional Court's ruling of 17 December 2007

… The immunity of a judge from administrative responsibility, as well as the immunity of a member of the Seimas and that of the Government, who are also officials fulfilling their functions in implementing state power, from administrative responsibility, is not established in the Constitution except in situations where administrative responsibility is related to the restriction of the liberty of a judge …

On the other hand … an unfounded attempt to hold a judge administratively responsible in certain circumstances may actually mean an interference with his/her activities in an attempt to make an impact on the decisions of such a judge, or to take revenge on such a judge for decisions made by him/her.

Thus, the Constitution gives rise to the obligation of the legislature to establish such a procedure for bringing judges to administrative responsibility that could ensure as much as possible that judges are held administratively responsible only on reasonable grounds.

At the same time, it should be noted that, in the course of ensuring the independence of judges when they administer justice, regard should be paid to the fact that, under the Constitution, judges have no immunity from administrative responsibility (except in situations where administrative responsibility is related to the restriction of liberty). A fair balance should be found for the purpose of implementing the provisions of Paragraphs 1 and 2 of Article 114 of the Constitution.

For instance, such a rule would generally comply with the Constitution (also from the *de lege ferenda* viewpoint) that, in order to bring a judge to administrative responsibility, consent (permission) should be obtained from a certain institution of the judiciary (particular court, a higher court of the respective system of courts) or a self-governance institution of the judiciary (special institution of judges, which is envisaged in Paragraph 5 of Article 112 of the Constitution and is provided for by law, or another self-governance institution of the judiciary).

It should be emphasised that the aim of such consent (permission) is to make sure that no preconditions are created for a judge who commits an administrative violation to escape administrative responsibility, and that no impact on the activities of a judge is made, since any such impact is prohibited by the Constitution (Paragraph 1 of Article 114 of the Constitution).

The pension of a judge as a social (material) guarantee of judges (Articles 52 and 109 of the Constitution)

The Constitutional Court's ruling of 29 June 2010

The Constitutional Court has held that, if the legislature consolidates such a social (material) guarantee of judges after their powers cease as the pension of judges, this guarantee is defended not only under Article 109 of the Constitution, but also under Article 52 thereof (ruling of 22 October 2007).

… the legislature, while regulating the relationships connected with the state pension of judges, must establish, by means of a law, the grounds and conditions for granting this pension. The legislature may establish, by means of a law, the maximum amount of the state pension of judges and consolidate various ways for determining this amount. In doing so, the legislature must not violate the norms and principles of the Constitution. In this context, it needs to be noted that the legislature, while consolidating, by means of a law, the maximum amount of such a pension and the ways for determining this amount, must pay regard, *inter alia*, to the fact that the state pension of judges is a social (material) guarantee of judges after their powers cease, which stems from the Constitution and is defended not only under Article 109 of the Constitution, but also under Article 52 thereof, that this social (material) guarantee must be in line with the constitutional status of judges and their dignity, and that such a constitutional social (material) guarantee of judges must be real and not merely nominal. Otherwise, the essence and purpose of the state pension of judges as a social (material) guarantee of judges after their powers cease, which stems from the Constitution, would be denied; thus, the preconditions for deviating from the requirements arising from the Constitution, *inter alia*, Paragraph 2 of Article 109 thereof, as well as from the constitutional principle of a state under the rule of law, would be created.

The differentiation of the social (material) guarantees of judges

The Constitutional Court's ruling of 29 June 2010

… the guarantees of the social (material) nature of judges, *inter alia*, the social guarantees after the powers of judges cease, may be differentiated according to the length of time during which a person works as a judge. … the size of the social (material) guarantees after the powers of judges cease may also be differentiated according to the length of time during which a person works as a judge. However, a legal regulation under which the size of the social (material) guarantees of judges after their powers cease is

differentiated according to the length of time during which a person works as a judge must not deviate from the constitutional concept of this social (material) guarantee of judges. In this context, it needs to be noted that such a legal regulation whereby the size of the said social (material) guarantee of judges would be the same or similar for judges who received the remuneration of equal or similar amount, but whose duration of work in courts differs considerably, or whereby the size of the said social (material) guarantee would differ considerably for judges who received the remuneration of equal or similar amount, but whose duration of work in courts differs insignificantly, would not be in conformity with the constitutional concept of the social (material) guarantee of judges after their powers cease, *inter alia*, with the requirements of Paragraph 2 of Article 109 of the Constitution, as well as with the imperatives of justice, proportionality, and reasonableness, which stem from the constitutional principle of a state under the rule of law

[…]

… while regulating the relationships connected with 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*, the aspect of the term of office of the justices of the Constitutional Court.

… the legislature, while regulating the relationships connected with 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 the judges of other courts with respect to their constitutional status, *inter alia*, the term of office. Otherwise, the constitutional concept of the 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.

Reducing the financing of courts and the social (material) guarantees of judges upon the emergence of a particularly difficult economic and financial situation in the state

The Constitutional Court's ruling of 29 June 2010

The Constitution … prohibits the reduction of the remuneration and [other] social guarantees of judges; any attempts to reduce the remuneration of judges or their other social (material) guarantees, or any limitation upon the financing of courts should be treated as an encroachment upon the independence of judges and courts (rulings of 6 December 1995 and 21 December 1999, the decision of 12 January 2000, the rulings of 12 July 2001 and 28 March 2006, and the decision of 8 August 2006). As well as any other person, a judge has the right to defend his/her rights, legitimate interests, and legitimate expectations (rulings of 12 July 2001 and 22 October 2007).

On the other hand, when there is an essential change in the economic and financial situation of the state and when, due to special circumstances (economic crisis, a natural disaster, etc.), a particularly difficult economic and financial situation arises in the state, there may be not enough funds, due to objective reasons, to fulfil the functions of the state and to satisfy the public interests and, thus, also to ensure the material and financial needs of courts. Under such circumstances, the legislature may change the legal regulation governing remuneration and pensions paid to various persons and consolidate such a legal regulation governing remuneration and pensions that would be less favourable to those persons if this is necessary in order to ensure the vital interests of society and the state and to protect other constitutional values. However, in such cases the legislature must also maintain the balance between the rights and legitimate interests of persons with respect to whom the less favourable legal regulation is established and the interests of society and the state, i.e. the legislature must pay regard to the requirements of the principle of proportionality. Consequently, in the case of a particularly difficult economic and financial situation in the state, the remuneration of judges and the state pensions of judges may also be reduced. If such a legal regulation were established whereby, in the case of a particularly difficult economic and financial situation in the state, it

would not be allowed to reduce exclusively the financing of courts or exclusively the remuneration and the state pensions of judges, this would mean that courts are groundlessly singled out from among other institutions that implement state power and that judges are groundlessly singled out from among other persons that participate in carrying out the powers of the respective institutions of state power. The consolidation of such an exceptional situation of courts (judges) would not be in line with the requirements of an open, fair, and harmonious civil society and the imperatives of justice. It is allowed to worsen the financial and material conditions provided for under laws for the functioning of courts and to reduce the remuneration of judges and the state pensions of judges only by means of a law and it is allowed to do so only on a temporary basis for the period of time when the economic and financial condition in the state is particularly difficult; such reduction of the remuneration and state pensions of judges must not give rise to any preconditions for the violation of the independence of courts by any other institutions of state power and their officials (rulings of 26 March 2006 and 22 October 2007).

… if such a legal regulation were established whereby the size of the said social (material) guarantees of judges would be calculated on the basis of the remuneration of judges temporarily reduced due to a particularly difficult economic and financial situation in the state, this would not be in line with the imperatives of the equality of the rights of persons and justice, which stem from the Constitution, *inter alia*, from the constitutional principle of a state under the rule of law.

It needs to be noted that the modification of a legal regulation by means of which state pensions are reduced to a large extent due to the fact that, upon the emergence of an extreme situation (economic crisis etc.) in the state, the economic and financial situation changes in such a way that the accumulation of the funds necessary to pay state pensions is not secured is an essential amendment to the legal regulation of these pensions. Thus, the legislature, upon the emergence of an extreme situation where, *inter alia*, due to an economic crisis, it is impossible to accumulate the amount of the funds necessary to pay state pensions, must, while reducing state pensions to a large extent, provide for such a mechanism of compensating for losses incurred by the persons to whom such pensions were granted and paid whereby, after the said extreme situation is over, the state would undertake the obligation to such persons to compensate them, in a fair manner and within a reasonable time, for the losses incurred by them due to the reduction of state pensions (decision of 20 April 2010).

The Constitutional Court has also held that the nature and character of state pensions are different from those of state social insurance old-age pensions, as well as from the nature and character of other state social insurance pensions, and these particularities imply that, when there is a particularly difficult economic and financial situation in the state and when, due to this, it is necessary to temporarily reduce pensions in order to secure the vitally important interests of society and the state and to protect other constitutional values, the legislature may reduce these pensions to the extent that is greater than the reduction of old-age or disability pensions. The aforesaid particularities also imply that losses incurred due to the reduction of state pensions may be compensated to the extent that is smaller than compensation for losses incurred due to the reduction of old-age or disability pensions (decision of 20 April 2010).

These official constitutional doctrinal provisions are *mutatis mutandis* also applicable to the reduction of the state pensions of judges.

Remunerating judges for overtime work, work during days off, and on holidays

The Constitutional Court's ruling of 14 February 2011

… heads of courts (their deputies, chairpersons of divisions, etc.) must organise the work of courts, *inter alia*, work after working hours and work during days off and on holidays, so that the allocations set for the remuneration of judges would be used rationally.

[…]

… the Constitution and laws also give rise to such functions of judges while performing which a judge is obliged to work overtime, during days off, and on holidays: for instance, under Paragraph 3 of Article 20

of the Constitution, a person apprehended in *flagrante delicto* must, within 48 hours, be brought before a court for the purpose of deciding, in the presence of this person, on the validity of the apprehension …

[…]

… under the Constitution, *inter alia*, Paragraph 1 of Article 48 thereof, there may not be any such a situation where a judge who fulfils such functions specified in … laws that must be performed after working hours, during days off, and on holidays would be not remunerated or would not be remunerated for the said work in a fair manner.

Consequently, under the Constitution, *inter alia*, Paragraph 1 of Article 48 thereof, and the constitutional principle of a state under the rule of law, such a legal regulation [must be] established under which judges who perform the functions of judges specified in … laws would be remunerated for overtime work, work during days off, and on holidays in a fair manner.

Reducing the remuneration of judges upon the emergence of a particularly difficult economic and financial situation in the state

The Constitutional Court's ruling of 1 July 2013

… the reduction of the remuneration of judges must not be disproportionate or discriminatory; *inter alia*, remuneration may not be reduced exclusively for judges, or exclusively for judges of certain courts, or exclusively for judges performing certain duties; the proportions of the amounts of remuneration established at the time prior to the emergence of a particularly difficult economic and financial situation in the state for judges performing different duties (for judges of different systems of courts and/or of different levels of courts), as well as the proportions of the amounts of remuneration established for different categories of judges and other persons (*inter alia*, state servants, politicians, and officials) who are paid for their work from the funds of the state or municipal budget, may not be violated. Any failure to observe the said requirements should be regarded as an encroachment upon the independence of judges and courts and, thus, *inter alia*, also as a violation of Paragraph 2 of Article 109 of the Constitution and the constitutional principle of a state under the rule of law.

The independence of judges and courts

The Constitutional Court's decision of 10 March 2014

The principle of the independence of judges and courts, which is enshrined in the Constitution, obliges the legislature to establish such guarantees of the independence of judges and courts that would ensure the impartiality of courts in adopting decisions and would not permit any interference with the activities of judges and courts in the course of administering justice (ruling of 28 March 2006). In the jurisprudence of the Constitutional Court, it has been held that the independence of judges and courts, as well as their impartiality, may be ensured by means of various measures, *inter alia*, by establishing, by means of laws, their procedural independence, the organisational independence and self-governance of courts, the status of judges, and the social (material) guarantees of judges (rulings of 21 December 1999, 27 November 2006, and 22 October 2007).

The assessment of the entirety of the guarantees of the independence of judges and courts makes it possible to assert that the said guarantees are closely interrelated (ruling of 6 December 1995). In general, the independence of judges and courts cannot be assessed according to any single, even very significant, feature. Therefore, it is universally recognised that, if any of the guarantees of the independence of judges and courts are violated, the administration of justice can be compromised and there would be a risk that human rights and freedoms will not be ensured and the supremacy of law will not be guaranteed (ruling of 21 December 1999).

The procedural independence of judges

The Constitutional Court's decision of 10 March 2014

The procedural independence of judges and courts, which includes, *inter alia*, the autonomy of courts in deciding all issues related to a case under consideration, is one of the aspects of the principle of the independence of judges and courts – only a court itself decides on how it should consider a case. The Constitutional Court has held that judges are not bound by the obligation to account for cases considered by them to any state institution or officials (ruling of 21 December 1999). The procedural independence of a judge is a necessary condition for an impartial and fair consideration of a case (ruling of 21 December 1999).

Decisions adopted by a judge may be reviewed and altered or rescinded only by a court of higher instance in accordance with the procedure provided for in procedural laws (ruling of 21 December 1999). The Constitutional Court has held that the purpose of the instance system of courts is to remove any possible errors of courts of lower instance, not to permit the administration of injustice and, thus, to protect the rights and legitimate interests of a person and society (rulings of 16 January 2006, 28 March 2006, 6 December 2012, and 15 November 2013). The purpose of the instance system of courts of general jurisdiction is to create the preconditions for courts of higher instance to correct any errors of fact (i.e. of the establishment and assessment of legally significant facts) or those of law (i.e. of the application of law), which could, for some reasons, be made by a court of lower instance, and not to permit the administration of injustice in any civil case, criminal case, or case of another category considered by courts of general jurisdiction (ruling of 28 March 2006). Justice is administered by always leaving the possibility of correcting any possible error (rulings of 9 December 1998 and 15 November 2013).

The instance system of courts of general jurisdiction, which stems from the Constitution, may not be interpreted as restricting the procedural independence of courts of general jurisdiction of lower instance: courts of general jurisdiction of higher instance (and judges thereof) may not interfere in cases considered by courts of general jurisdiction of lower instance, give them any obligatory or recommendatory instructions on how the cases in question must be decided, etc.; in respect of the Constitution, such instructions (whether obligatory or recommendatory) should be assessed as acting *ultra vires* by the said courts (judges) (rulings of 28 March 2006 and 9 May 2006).

It should be noted that the said provisions of the official constitutional doctrine, which reveal the purpose of the instance system of courts of general jurisdiction and the procedural independence of courts of general jurisdiction, are also *mutatis mutandis* applicable to specialised courts, which are established under Paragraph 2 of Article 111 of the Constitution.

The self-regulation and self-governance of the judiciary

The Constitutional Court's decision of 10 March 2014

The Constitutional Court has held on more than one occasion that the full role and independence of the judiciary imply its self-regulation and self-governance, which includes, *inter alia*, the organisation of the work of courts and the activities of the professional corps of judges (rulings of 21 December 1999 and 9 May 2006).

A special institution of judges, provided for in Paragraph 5 of Article 112 of the Constitution, which advises the President of the Republic on the appointment, promotion, and transfer of judges or their release from duties, is an important element of the self-governance of the judiciary as an independent branch of state power. The constitutional powers of the said institution of judges are related to the participation of the judiciary, as the branch of state power formed on a professional basis, and certain members of the corps of judges who implement judicial power and, in accordance with the procedure prescribed under the law, are appointed or elected to the said special institution of judges in adopting decisions on the career of judges (ruling of 9 May 2006). A special institution of judges, which is provided for in Paragraph 5 of Article 112 of the Constitution, is a counterbalance to the President of the Republic as the subject of the executive in the area of the formation of the corps of judges (rulings of 21 December 1999 and 13 December 2004).

In the jurisprudence of the Constitutional Court, among other things, it has been held that the inadmissibility, which stems from the Constitution, to release a judge from his/her duties without the advice of a special institution of judges, which is specified in Paragraph 5 of Article 112 of the Constitution and is

provided for by means of a law, is a very important guarantee of the independence of judges and courts and is one of the means that helps judges of all courts with no exception to protect themselves from the interference of state power and governing institutions, the members of the Seimas, as well as other officials, political parties, political and public organisations, and other persons, with the activities of judges or courts (ruling of 9 May 2006).

As it was noted in the Constitutional Court's ruling of 9 May 2006, a special institution of judges, which is specified in Paragraph 5 of Article 112 of the Constitution, is not the only element of the self-governance of the judiciary as an independent branch of state power; under the Constitution, the legislature, while paying regard to the constitutional principle of the independence of judges and courts and other provisions of the Constitution, also has the powers to establish, by means of a law, other self-governance institutions of the judiciary, to establish the procedure of their formation, powers, etc.; moreover, while seeking to ensure the effectiveness of the self-governance of the judiciary and in view of the fact that, under the Constitution, the self-governing judiciary must not be too centralised, certain such other institutions must be formed (first of all, the meeting of judges (or their representatives) without which the self-governance of the judiciary as a fully fledged and independent branch of state power is, in general, impossible); while regulating the relationships related to the formation of such institutions, the legislature has broad discretion.

The protection of the social (material) guarantees of judges, *inter alia*, the prohibition on reducing the level of these guarantees in cases where the system of the state pensions of judges is reorganised

The Constitutional Court's decision (no KT1-S1/2015) of 14 January 2015

… the state pension of judges, established by means of a law, is one of the types of pensions that are not directly specified in Article 52 of the Constitution; it is linked with a special status of a person – it is granted to judges for their service after their powers cease. It should also be noted that the legislature has a certain degree of discretion to establish the conditions for granting and paying the said pensions and their amounts, *inter alia*, when the system of pensions is reorganised; however, when doing so, it must pay regard to the Constitution.

In this context, the provisions of the Constitutional Court's ruling of 29 June 2010 that are related to the independence of judges and courts, which is consolidated in the Constitution (*inter alia*, Article 109 thereof), should also be noted:

– the independence of judges and courts is not a privilege, but one of the most important duties of judges and courts, stemming from the right (guaranteed by the Constitution) of every person, who believes that his/her rights or freedoms have been violated, to have an impartial arbiter of a dispute, who would settle a legal dispute on the merits under the Constitution and laws (rulings of 6 December 1995, 21 December 1999, 12 July 2001, 9 May 2006, and 22 October 2007);

– a judge, who is obligated to consider conflicts arising in society, as well as those between a person and the state, must be not only highly professionally qualified and of impeccable reputation, but also materially independent, and feel secure as to his/her future (rulings of 12 July 2001 and 22 October 2007); the imperative of the constitutional protection of the remuneration and other social (material) guarantees of judges stems from the principle of the independence of judges and courts, which is consolidated in the Constitution (*inter alia*, Article 109 thereof); through this principle, attempts are made to protect judges administering justice against both any influence of the legislative and executive branches and that of other state establishments and officials, political and public organisations, commercial and economic structures, and other legal and natural persons;

– the social (material) guarantees of the principle of the independence of judges that stem from the Constitution (which, actually, are also consolidated in the law of other democratic states, as well as in various international acts) mean that the state has the duty to ensure such social (material) provision for judges that would be in conformity with the status of judges while they are in office, as well as upon the expiry of their term of office (rulings of 21 December 1999 and 22 October 2007). Under the Constitution, the material and

social guarantees established for judges must be such that are in line with the constitutional status of judges and their dignity (decision of 8 August 2006 and the ruling of 22 October 2007);

– the legislature must establish such a legal regulation that would ensure the independence of judges and courts, *inter alia*, the social (material) guarantees of judges, not only when they are in office, but also after their powers cease; in doing so, the legislature must pay regard to the norms and principles of the Constitution; after the powers of judges cease, the social (material) guarantees of judges may be varied, including, *inter alia*, periodic payments, one-off payments, etc.; the constitutional basis for establishing such guarantees is the exceptional constitutional status of judges, which is determined by the function of the administration of justice; therefore, the said guarantees may depend only upon such circumstances that are related to the constitutional status of judges, but they may not be regarded as replacing other social (material) guarantees that must be ensured to former judges on other grounds including those that are common to all working persons; the social (material) guarantees of judges after their powers cease must be real and not merely nominal (ruling of 22 October 2007);

– the legislature, while regulating the relationships linked with the state pension of judges, must establish, by means of a law, the grounds and conditions for granting this pension; the legislature must pay regard, *inter alia*, to the fact that the state pension of judges is a social (material) guarantee of judges after their powers cease, which stems from the Constitution and is defended not only under Article 109 of the Constitution, but also under Article 52 thereof, that this social (material) guarantee must be in line with the constitutional status of judges and their dignity, and that such a constitutional social (material) guarantee of judges must be real and not merely nominal. Otherwise, the essence and purpose of the state pension of judges as a social (material) guarantee of judges after their powers cease, which stems from the Constitution, would be denied; thus, the preconditions for deviating from the requirements arising from the Constitution, *inter alia*, Paragraph 2 of Article 109 thereof, as well as from the constitutional principle of a state under the rule of law, would be created.

Thus, it should be noted that the state pension of judges, which is established by means of a law, is not an objective in itself and, under the Constitution, is not regarded as a privilege; the establishment of such a guarantee is related to the special constitutional status of judges and, in particular, with the requirement of the independence of judges, which is established in the Constitution, *inter alia*, Article 109 thereof. In other words, the state pension of judges, which is established by means of a law, is one of the social (material) guarantees of the principle of the independence of judges, which is consolidated in the Constitution, i.e. such a social (material) guarantee of judges that is established (applied) after their powers cease and is defended under Article 109 of the Constitution.

It needs to be emphasised that the social (material) guarantees of judges that are established (applied) to judges after their powers cease are one of the measures for ensuring the independence of judges. Only the provision of real rather than nominal social (material) future guarantees (*inter alia*, the pensions of judges), which are in line with the constitutional status of judges and their dignity, may ensure that, when administering justice, judges are not exposed to any influence of the decisions of the legislative or executive branch of power, or to any interference with their activities by the institutions of state power and governance, or their officials, or other persons; the provision of real social (material) guarantees may also protect judges against such possible decisions of the legislative, the executive, or public administration subjects that could put pressure on the decisions of judges in the course of administering justice; in addition, the provision of the said social (material) guarantees to judges may reduce the risk of corruption.

Consequently, although the state pension of judges, which is established by means of a law, is one of the types of pensions that are not directly specified in Article 52 of the Constitution and the legislature has a certain degree of discretion to establish the conditions for granting and paying the said pensions and their amounts, *inter alia*, while reorganising the system of pensions, the discretion of the legislature to regulate the state pensions of judges is narrower than the one in respect of other state pensions, since, among other requirements stemming from the Constitution, the legislature is also bound by the principle of the

independence of judges and courts, which is consolidated in the Constitution, *inter alia*, by the imperative of the reality of the social (material) guarantees of judges.

[…]

… it should be noted that the prohibition on reducing the level, established by means of a law, of the social (material) guarantees of judges, *inter alia*, of those which are established (applied) to judges after their powers cease, stems from the principle of the independence of judges and courts, which is consolidated in the Constitution. On the other hand, this prohibition is not absolute: the level of the social (material) guarantees that are established for (applied to) judges after their powers cease may be reduced only by means of a law and it is allowed to do so only on a temporary basis for the period of time when the economic and financial condition in the state is particularly difficult; however, such reduction must not give rise to any preconditions for the violation of the independence of courts by any other state authority institutions and their officials.

It needs to be emphasised that, otherwise, if the level of the social (material) guarantees of judges could be reduced also in other cases, i.e. when there is no particularly difficult economic and financial situation in the state, the independence of judges would be endangered; in other words, the preconditions would be created for exerting influence on judges by means of the decisions of the legislative or executive branch, for interference by the institutions of state power and governance, or their officials, or other persons with the activities of judges, for making those decisions of the legislative, executive, or public administration subjects by means of which the social (material) guarantees of judges would be reduced by putting pressure on the decisions taken in the course of administering justice, as well as for increasing the risk of corruption.

In the light of the foregoing arguments, the conclusion should be drawn … that, when the legislature reorganises the system of the state pensions of judges, no regulation reducing the level (established by means of a law) of the social (material) guarantees of judges may be established.

Differentiating the amount of the state pensions of judges; the imperative of the reality of the social (material) guarantees of judges

The Constitutional Court's decision (no KT1-S1/2015) of 14 January 2015

… under the Constitution:

– the length of service of judges may be a criterion for differentiating the amount of the pensions of judges; however, such a criterion must not be the only one;

– as in the case of the remuneration of judges, the position held by judges, i.e. in which system of courts and at which level of the system a person held the position of a judge, must also be a criterion for differentiating the amount of the pensions of judges; where, due to the specificity of a court, the constitutional status of judges has certain particularities, they should also be taken into account.

… Consequently, while paying regard to the Constitution and implementing the requirement, stemming therefrom, to differentiate the amount of the pensions of judges according to the positions held by judges (i.e. according to the system of courts and the level of such a system in which a person held the position of a judge), the legislature may provide that the remuneration received by judges, which, as mentioned before, must also depend on the positions of judges (i.e. the system of courts and the level of such a system in which a person held the position of a judge), is one of the criteria for differentiating the amount of the state pensions of judges.

[…]

… After the legislature has established such a criterion, regard must … be paid to the prohibition on differentiating the level of the social (material) guarantees of judges, which are established (applied) upon the expiry of the powers of judges, according to when the respective guarantees started to apply to a person, as well as to the requirement to review, as appropriate, the level of the social (material) guarantees applied to judges whose powers have already ceased if, in a changing economic or social situation, higher guarantees are established to the judges of the courts of the same system and the same level whose powers will expire later; both the said prohibition and requirement stem from the Constitution (*inter alia*, from the constitutional

principle of the independence of judges and courts, the imperative of the reality of the social (material) guarantees of judges, and the equal constitutional status of judges). Otherwise, a situation, prohibited by the Constitution, could arise where only such social (material) guarantees that were established at the moment of the cessation of the powers of judges would be applied to judges whose powers ceased, i.e. in the long term (if an economic or social situation changed), the said guarantees would no longer be real, but nominal.

Consequently, while paying regard to the Constitution, *inter alia*, the constitutional principle of the independence of judges and courts, the imperative of the reality of the social (material) guarantees of judges, and the equal constitutional status of judges, it is not allowed to establish any such a legal regulation that would create the preconditions for paying the state pensions of a considerably different amount of judges to persons whose length of service as a judge is the same at the same level of the same system of courts, irrespective of when the pension of judges would be granted to them.

In the light of the foregoing arguments, the conclusion should be drawn … that, after the legislature has provided that remuneration received by judges is one of the criteria for differentiating the amount of the state pensions of judges, the Constitution does not allow any such a legal regulation under which an increase in the remuneration of judges would have no influence on the amount of the granted and paid state pensions of judges.

The right of judges to receive remuneration for participation in projects for international cooperation and democracy promotion where such projects are related to improving the system of justice and the activity of courts

The Constitutional Court's decision of 16 May 2016

… Paragraph 1 of Article 135 of the Constitution consolidates the grounds for international cooperation carried out by the Republic of Lithuania in order to implement the constitutional objectives of foreign policy to ensure national security and independence, the welfare of its citizens, and their basic rights and freedoms, and to contribute to the creation of the international order based on law and justice; when account is taken of the geopolitical orientation of the State of Lithuania, the aforementioned grounds for international cooperation imply such an activity performed by the State of Lithuania, by its institutions, and by individuals employed therein that is aimed at contributing to the partnership of other states with the European Union or with NATO, or at contributing to the integration of the said states into these international organisations by promoting the dissemination of universal and democratic values, as well as the principles of EU law, as, for instance, democracy, the rule of law, transparency, the independence of courts and judges, respect for human rights and fundamental freedoms, and, *inter alia*, the dissemination of the said values and principles in the spheres of the improvement of the systems of justice and the activity of courts.

… courts are among the institutions exercising state power; the judiciary may fulfil its constitutional obligation and function, which is the administration of justice, only while being autonomous and independent of the other branches of power. In this context, it should be mentioned that the Constitutional Court has held that the autonomy and independence of judicial power does not mean that it and other state powers – legislative power and executive power – may not cooperate, of course, provided that they do not interfere with the exercise of the powers of other branches of power (ruling of 9 May 2006).

This, among other things, means that, under the Constitution, the role of courts is not limited exclusively to the administration of justice; as well as other institutions of state power, courts, within their constitutional competence, either independently or in cooperation with other state institutions, may participate in carrying out the general tasks and functions of the state; *inter alia*, courts may also participate in the activity of achieving the constitutional objectives of the foreign policy of the Republic of Lithuania and in the activity of fulfilling international obligations and those related to full membership in the European Union and NATO, including the participation in projects for international cooperation and democracy promotion. As mentioned before, this geopolitical orientation, which has been chosen by the Republic of Lithuania and is a constitutional value, also implies such an activity performed by the State of Lithuania, by its institutions, and by individuals employed therein that is aimed at contributing to the partnership of other states with the

European Union or with NATO, or at contributing to the integration of the said states into these international organisations by promoting the dissemination of universal and democratic values, as well as the principles of EU law, *inter alia*, the dissemination of the said values and principles in the spheres of the improvement of the system of justice and the activity of courts.

Thus, it is possible to implement the participation of the State of Lithuania and its institutions, *inter alia*, courts, in the said activity, among other things, when judges take part in support projects funded by international organisations or foreign states, or in projects financed under the Lithuanian Development Cooperation and Democracy Promotion Programme, where such projects are related to improving the system of justice and the activity of courts.

In the context of this decision, it also needs to be mentioned that the Constitutional Court has noted that the appropriate preparation of judges, the improvement of their knowledge and in-service training are an important precondition for ensuring the proper activity of courts (ruling of 21 December 1999 and the decision of 10 March 2014). The qualification of judges, their professionalism, and their ability to decide cases following not only laws, but also law, are among the factors determining public trust in courts (ruling of 27 November 2006).

It should be noted that one of the preconditions for the effective improvement of the qualification of judges is the possibility for judges who hold higher qualification, have greater work experience as a judge, and possess specific knowledge related to a certain area of law to share their knowledge and experience with other judges, *inter alia*, on the international level, as, for instance, when judges participate in projects for international cooperation and democracy promotion, thus contributing to the implementation of the aforesaid constitutional objectives of the foreign policy of the Republic of Lithuania, *inter alia*, to the fulfilment of the international obligations arising from the membership in the European Union and NATO, which include assistance to other states in the processes of their partnership with or integration into the European Union or NATO, as well as to the fulfilment of other international obligations undertaken by the State of Lithuania.

It has been mentioned that, under the Constitution, courts are allowed to participate in the activity of achieving the constitutional objectives of the foreign policy of the Republic of Lithuania and in the activity of fulfilling international obligations and those related to full membership in the European Union and NATO, including the participation in projects for international cooperation and democracy promotion. This means, among other things, that courts and judges may participate in an activity aimed at contributing to the improvement of the qualification of judges, *inter alia*, judges from other states, and at promoting the dissemination of universal and democratic values, as well as the principles of EU law, *inter alia*, the dissemination of the said values and principles in the spheres of the improvement of the systems of justice and the activity of courts.

… under Paragraph 1 of Article 113 of the Constitution, judges may not receive any remuneration other than the remuneration established for judges and payment for educational or creative activities. Thus, judges may receive payment for participating in the aforementioned international projects only if they are engaged in educational or creative activities while participating in the said projects.

At the same time, it needs to be noted that … the constitutional mission of courts is to administer justice. Thus, any other activity of judges, *inter alia*, their participation in support projects funded by international organisations or foreign states, or in projects financed under the Lithuanian Development Cooperation and Democracy Promotion Programme, where such projects are related to improving the system of justice and the activity of courts, may not interfere with the fulfilment of the main constitutional judicial obligation, arising from the Constitution, *inter alia*, Article 109 thereof, to administer justice in a proper and effective manner. On the other hand, it should also be noted that judges may participate only in such activity that is in line with the impartiality and independence of judges.

[…]

In view of what has been stated above, the conclusion should be drawn that the provision "Judges may receive only the remuneration of a judge paid from the state budget. Judges may not receive any remuneration other than the remuneration established for them and payment for educational or creative activities" … of

the Constitutional Court's ruling of 12 July 2001 means, *inter alia*, that judges may receive payment for participating in support projects funded by the European Union, by other international organisations, or by foreign states, or for participating in projects financed under the Lithuanian Development Cooperation and Democracy Promotion Programme, where such projects are related to improving the system of justice and the activity of courts only if they are engaged in educational or creative activities while participating in the said projects …

The right of judges to hold the duties of a judge of an international court and to receive remuneration for holding such duties

The Constitutional Court's decision of 16 May 2016

In the Constitutional Court's ruling of 12 July 2001, a certain provision of which is requested to be interpreted, it was noted that the incompatibility of the office of a judge with another office or employment is determined by the special legal situation of both judges and courts as one of the branches of state power; the established prohibition is aimed at ensuring the independence and impartiality of judges, which are necessary conditions for the implementation of justice.

It is clear from this provision that the prohibition imposed on judges on holding any other elective or appointive office, or working in any private establishments or enterprises, is not an objective in itself – this prohibition is aimed at ensuring the independence and impartiality of judges and the proper administration of justice.

In this context, it should be noted that … the question whether the prohibition preventing a judge from receiving any remuneration other than that established for judges and payment for educational or creative activities includes the prohibition preventing a judge from receiving remuneration for holding the duties of a judge of an international court (in cases where the duties of a judge of a national court and those of a judge of an international court are combined) must be assessed in the context of the constitutional grounds for the international cooperation of the Republic of Lithuania, which are consolidated in various provisions of the Constitution, *inter alia*, in Paragraph 1 of Article 135 thereof, as well as in the context of the international obligations undertaken by the State of Lithuania of its own free will.

As mentioned before, in implementing its foreign policy, the Republic of Lithuania follows the universally recognised principles and norms of international law, seeks to ensure national security and independence, the welfare of its citizens, and their basic rights and freedoms, and contributes to the creation of the international order based on law and justice; the Republic of Lithuania participates in international organisations provided that this is not in conflict with the interests and independence of the state; respect for international law, i.e. the observance of international obligations undertaken of its own free will and respect for the universally recognised principles of international law (as well as the principle of *pacta sunt servanda*) are a legal tradition and a constitutional principle of the restored independent State of Lithuania.

It should also be noted that the general grounds, which are consolidated in the Constitution, for international cooperation carried out by the state are characterised, *inter alia*, by the establishment of the geopolitical orientation of the State of Lithuania – the membership of the Republic of Lithuania in the European Union and NATO and the necessity to fulfil the international obligations related to the said membership; the geopolitical orientation of the Republic of Lithuania is related to such an activity performed by the State of Lithuania, by its institutions, and by individuals employed therein that is aimed at contributing to the partnership of other states with the European Union or with NATO, or at contributing to the integration of the said states into these international organisations by promoting the dissemination of universal and democratic values, as well as the principles of EU law, as, for instance, democracy, the rule of law, the independence of courts and judges, respect for human rights and fundamental freedoms, *inter alia*, the dissemination of the said values and principles in the spheres of the improvement of the system of justice and the activity of courts.

As mentioned before, one of the preconditions for the effective improvement of the qualification of judges is the possibility for judges who hold higher qualification, have greater work experience as a judge,

and possess specific knowledge related to a certain area of law to share their knowledge and experience with other judges, *inter alia*, on the international level, as, for instance, when judges participate in projects for international cooperation and democracy promotion, thus contributing to the implementation of the constitutional objectives of the foreign policy of the Republic of Lithuania and to the fulfilment of the international obligations arising from the membership in the European Union and NATO.

… as mentioned before, under the Constitution, the role of courts is not limited exclusively to the administration of justice – they are allowed to participate in the activity of achieving the constitutional objectives of the foreign policy of the Republic of Lithuania and in the activity of fulfilling international obligations and those related to full membership in international organisations, *inter alia*, in the European Union.

Thus, the fact that the Republic of Lithuania carries out international cooperation and complies with the assumed international obligations may also be interpreted as meaning that the Republic of Lithuania fulfils its international obligations towards the international community in the sphere of the administration of justice, *inter alia*, its obligation to participate in the activity of international courts. The said obligations imply the duty of the state to appoint suitable and highly qualified representatives (*inter alia*, judges of national courts) to international institutions or international judicial institutions.

It should be noted that judges of international courts are subject to requirements of high professional qualification, expert knowledge, and/or proficiency in foreign languages. The recognition of the right of a judge of a national court to hold the duties of a judge of an international court (in cases where the duties of a judge of a national court and those of a judge of an international court are combined) means the recognition of high professional qualification held by him/her, as well as his/her ability to properly administer justice both on the national and international level and, thus, to contribute to achieving the constitutional objectives of the foreign policy of the Republic of Lithuania, *inter alia*, to complying with the international obligations in the sphere of the administration of justice.

Thus, the established requirements for judges relating to high professional qualification and expert knowledge are aimed at ensuring the authority of courts as independent and impartial judicial power, as well as the proper and effective fulfilment of judicial functions.

… Paragraph 1 of Article 113 of the Constitution provides, *inter alia*, that judges may not hold any other elective or appointive office, or work in any business, commercial, or other private establishments or enterprises. This prohibition is aimed at ensuring the independence and impartiality of judges, as well as the proper fulfilment of the function of the administration of justice, which is attributed to courts under the Constitution, *inter alia*, Article 109 thereof. It should also be noted that the prohibition preventing judges from working in business, commercial, or other private establishments or enterprises does not apply to their educational, creative, *inter alia*, scientific, activity in educational or scientific establishments: under the Constitution, the said activity is allowed.

In this context, it should also be mentioned that the Constitution, *inter alia*, Paragraph 2 of Article 103 and Article 112 thereof, explicitly provides for other positions in courts that may be held only by a judge of a particular court: namely, the positions of the President of the Constitutional Court, the President of the Supreme Court, the President of the Court of Appeal, as well as the presidents of regional, district, and specialised courts.

It should be noted that Paragraph 5 of Article 112 of the Constitution explicitly provides that a special institution of judges, as provided for by means of a law, advises the President of the Republic on the appointment, promotion, and transfer of judges or their release from duties. The Constitutional Court has held that this state institution must be comprised only from judges, since, under the Constitution, no other institution, official, or other person may have the powers to advise the President of the Republic on the appointment, promotion, and transfer of judges or their release from duties (ruling of 9 May 2006).

Thus, under the Constitution, judges may perform certain other judicial duties specified *expressis verbis*, including duties in judicial self-governance bodies, *inter alia*, those in a special institution of judges, which is provided for in Paragraph 5 of Article 112 of the Constitution.

It should also be noted that, under Paragraph 4 of Article 111 of the Constitution, the formation and competence of courts is established by the Law on Courts of the Republic of Lithuania. The Constitutional Court has held that the Constitution not only obliges the legislature to lay down, by means of a law, the establishment and competence of all the courts of the Republic of Lithuania (thus, including the status, formation, exercise of powers (activity), and guarantees of courts of general jurisdiction, the status of judges of these courts, etc.), which are specified in Paragraph 1 of Article 111 of the Constitution, but also *expressis verbis* consolidates the title of this law – the Law on Courts (rulings of 28 March 2006, 9 May 2006, and 22 October 2007 and the decision of 15 May 2009).

Thus, other positions that judges are also allowed to hold may be established in the Law on Courts, which is *expressis verbis* specified in the Constitution, as, for instance, the deputy president of a court, or the chairperson of a particular division of a court.

… it should be noted that judges of national courts may also perform the duties of judges of international courts (in cases where they combine the duties of a judge of a national court and those of a judge of an international court) if such a possibility is provided for under the obligations consolidated in the international treaties of the Republic of Lithuania to participate in the activity of international courts and implies the duty of the state to appoint highly qualified representatives (*inter alia*, judges of national courts) to international institutions or international judicial institutions. It should also be noted that the activity of such representatives, where they combine the duties of a judge of a national court and those of a judge of an international court, contributes to the achievement of the constitutional objectives of the foreign policy pursued by the Republic of Lithuania, *inter alia*, to the fulfilment of the international obligations in the sphere of the administration of justice, as well as to the creation of the international order based on law and justice. In addition, the said activity where the duties of a judge of a national court and those of a judge of an international court are combined must not be continuous – it may be carried out only on a temporary basis

The performance of the duties of a judge of an international court may not be considered the activity of a judge prohibited by Paragraph 1 of Article 113 of the Constitution, since the mission of the duties of a judge of a national court and that of the duties of a judge of an international court is to administer justice: judges are subject to the same requirements of the independence and impartiality of courts and judges, they are granted a special status, *inter alia*, the term of powers of judges is inviolable and any interference with the activity of judges and courts is prohibited. It should be noted that a judge of a national court, when holding the duties of a judge of an international court (in cases where the duties of a judge of a national court and those of a judge of an international court are combined), may not, solely due to this, lose his/her powers of a national judge. At the same time, it should also be noted that combining the duties of a judge of a national court and those of a judge of an international court in itself does not give rise to doubts as to the impartiality and independence of a judge.

In view of this, it should be held that, under the Constitution, judges are allowed to perform certain other specified duties in courts and in judicial self-governance bodies, whereas international treaties of the Republic of Lithuania may also provide for situations where judges may perform, *inter alia*, the duties of judges of international courts (in cases where they combine the duties of a judge of a national court and those of a judge of an international court). Such an activity may not interfere with the fulfilment of the main constitutional judicial duty, arising from Article 109 of the Constitution, to administer justice in a proper and effective manner.

It should also be held that the right of judges to perform the duties of judges of international courts (in cases where they combine the duties of a judge of a national court and those of a judge of an international court) also implies their right to receive remuneration for the performance of such duties. At the same time, it needs to be noted that … according to Paragraph 1 of Article 113 of the Constitution, judges may not receive any remuneration other than the remuneration established for judges and payment for educational or creative activities; therefore, the conclusion should be drawn that, when performing the duties of judges of international courts (in cases where the duties of a judge of a national court and those of a judge of an

international court are combined), judges are not allowed to receive the remuneration of a judge of a national court and that of a judge of an international court at the same time.

In view of what has been stated above, the conclusion should be drawn that the provision "Judges may receive only the remuneration of a judge paid from the state budget. Judges may not receive any remuneration other than the remuneration established for them and payment for educational or creative activities" … of the Constitutional Court's ruling of 12 July 2001 means, *inter alia*, that … judges … may receive the remuneration of a judge of an international court (in cases where the duties of a judge of a national court and those of a judge of an international court are combined); however, they must not receive the remuneration of a judge of a national court at the same time.

The immunity of judges (Paragraph 2 of Article 114 of the Constitution)

The Constitutional Court's ruling of 9 March 2020

As the Constitutional Court held in its ruling of 30 May 2003, one of the constitutionally consolidated guarantees of the independence of judges is the immunity of judges, which is enshrined, *inter alia*, in Paragraph 2 of Article 114 of the Constitution, under which judges may not be held criminally responsible or be detained, or have their liberty restricted otherwise, without the consent of the Seimas or, in the period between the sessions of the Seimas, without the consent of the President of the Republic. The Constitutional Court has held that immunity means additional guarantees for a person's inviolability, which are necessary and indispensable for the proper performance of the duties of that person (ruling of 8 May 2000).

… under the Constitution, *inter alia*, Paragraph 2 of Article 114 thereof, interpreted in conjunction with Paragraph 2 of Article 109 of the Constitution, the immunity of judges is not an objective in itself. It needs to be emphasised that the constitutional immunity of judges is functional in nature: its purpose is to guarantee the independence of judges, so that the administration of justice is ensured. Only such a concept of the immunity of judges is compatible with the obligation, stemming from the Constitution, for a democratic state under the rule of law to ensure the security of each person and all society against criminal attempts, *inter alia*, the duty of the legislature to create, by means of a legal regulation, the preconditions for the speedy disclosure and thorough investigation of criminal acts and other violations of law, as well as the preconditions for the fair solving of the question concerning the legal responsibility of persons having committed these criminal acts or other violations of law. Thus, the immunity of judges, consolidated in Paragraph 2 of Article 114 of the Constitution, is not meant to create the preconditions for judges to avoid criminal or other legal responsibility for criminal acts or other violations of law. A different interpretation of the immunity of judges, including that, purportedly, the legislature may provide for the broader immunity of judges than that consolidated in Paragraph 2 of Article 114 of the Constitution, would be incompatible with the constitutionally consolidated concept of a democratic state under the rule of law, *inter alia*, it would be incompatible with the constitutional obligation of the state to ensure the security of each person and all society against criminal attempts; the said different interpretation of the immunity of judges would also unreasonably single out judges from society and would imply a privilege, prohibited under Paragraph 2 of Article 29 of the Constitution.

… the requirement, under Paragraph 2 of Article 114 of the Constitution, that judges may not be held criminally responsible or be detained, or have their liberty restricted otherwise, without the consent of the Seimas or of the President of the Republic, is consolidated for the purpose of enabling the maximum protection of judges 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 judges.

Interpreting Paragraph 2 of Article 114 of the Constitution, under which a judge, *inter alia*, may not be held criminally responsible without the consent of the Seimas or, in the period between the sessions of the Seimas, without the consent of the President of the Republic, it should be noted that such consent of the Seimas or the President of the Republic may be given only in cases where, in accordance with the procedure prescribed by means of laws, sufficient data are collected to suspect the judge concerned of having committed a criminal act.

… Paragraph 2 of Article 114 of the Constitution, under which a judge, *inter alia*, may not be held criminally responsible without the consent of the Seimas or, in the period between the sessions of the Seimas, without the consent of the President of the Republic, should be interpreted in conjunction with Paragraph 1 of Article 20 of the Constitution, according to which human liberty is inviolable, as well as in conjunction with Paragraph 2 of the said article, under which no one may be arbitrarily apprehended or detained; no one may be deprived of his/her liberty otherwise than on the grounds and according to the procedures established by law. The Constitutional Court has held that Paragraph 1 of Article 20 of the Constitution lays down the human right to physical liberty (ruling of 8 May 2000) and that this liberty means, first of all, the protection of an individual against arbitrary apprehension or detention (ruling of 5 February 1999). Paragraph 2 of Article 20 of the Constitution enshrines the principle of the lawfulness of the apprehension of a person: a person must not be deprived of liberty otherwise than on such grounds and in accordance with such procedures as are established by means of a law (ruling of 5 February 1999).

Thus, under Paragraph 2 of Article 114 of the Constitution, which enshrines the functional immunity of a judge, intended to guarantee the independence of a judge in order to ensure the administration of justice, the consent of the Seimas or that of the President of the Republic is required only for such restriction of the physical liberty of a judge that is aimed at providing the preconditions for holding the judge criminally or otherwise legally responsible for having committed criminal acts or other violations of law; *inter alia*, this consent is required for his/her apprehension, detention, or the deprivation of his/her liberty otherwise. However, under Paragraph 2 of Article 114 of the Constitution, no consent of the Seimas or the President of the Republic is required for such procedural measures provided for by law that, in themselves, do not restrict the physical liberty of a person and are necessary for the speedy disclosure and thorough investigation of criminal acts and other violations of law, *inter alia*, for collecting evidence and identifying persons having committed criminal acts or other violations of law (*inter alia*, for carrying out a search, seizure, or inspection).

A different interpretation of Paragraph 2 of Article 114 of the Constitution, including that, purportedly, the consent of the Seimas or that of the President of the Republic is necessary for any procedural measures that, in themselves, do not restrict the physical liberty of a person, but are related to performing the duties of the person prescribed by means of laws in applying these measures, would create the preconditions for persons, *inter alia*, judges, having committed criminal acts or other violations of law to avoid criminal or other legal responsibility. The requirement to receive the consent of the Seimas or that of the President of the Republic in order for the said procedural measures to be applied to judges would be incompatible with the obligation, stemming from the Constitution, for a democratic state under the rule of law to ensure the security of each person and all society against criminal attempts, *inter alia*, with the duty of the legislature to create, by means of a legal regulation, the preconditions for the speedy disclosure and thorough investigation of criminal acts and other violations of law, as well as the preconditions for the fair solving of the question concerning the legal responsibility of persons, *inter alia*, judges, having committed these criminal acts or other violations of law.

It should be noted that the requirement, consolidated under Paragraph 2 of Article 114 of the Constitution, to receive the consent of the Seimas or that of the President of the Republic in order to hold a judge criminally responsible or detain him/her, or to restrict his/her liberty otherwise, must not be interpreted as precluding the apprehension of a judge, in accordance with the procedure prescribed by law and if necessary, where the judge is found in the act of committing a criminal offence or another violation of law. A different interpretation, including that, purportedly, the absence of the consent in question would preclude the restriction of the liberty of a judge where the judge is found in the act of committing a criminal offence or another violation of law would be incompatible with the obligation, stemming from the Constitution, for a democratic state under the rule of law to ensure the security of each person and all society against criminal attempts, since it would create the preconditions for a judge to avoid legal responsibility for the committed criminal act or another violation of law.

It should also be noted that, in cases where a judge is found in the act of committing a criminal offence, under Paragraph 2 of Article 114 of the Constitution, it is necessary, without undue delay, to receive the consent of the Seimas or, in the period between the sessions of the Seimas, the consent of the President of the Republic for holding the judge criminally responsible.

9.1.4. The constitutional status of judges. The appointment of judges, their professional career, and their release from duties. The judicial self-governance institutions

The constitutional status of judges

The Constitutional Court's ruling of 12 July 2001

The specific function of courts and the principle of the independence of judges and courts, which are consolidated in the Constitution, also determine the legal status of judges. It needs to be noted that the judiciary is formed on a professional, but not on a political basis. "According to the duties performed, judges may not be deemed to be state servants. No one may demand that they follow a certain political guideline. The judicial practice (case law) is formed only by courts while applying the norms of law. Judges ensure human rights and freedoms in that they administer justice on the grounds of the Constitution and laws" (ruling of 21 December 1999).

A special institution of judges, which is specified in Paragraph 5 of Article 112 of the Constitution and is provided for by law

The Constitutional Court's ruling of 13 December 2004

Paragraph 5 of Article 112 of the Constitution provides that a special institution of judges, as provided for by law, advises the President of the Republic on the appointment, promotion, and transfer of judges or their release from duties. In its ruling of 21 December 1999, when interpreting the said provision of Paragraph 5 of Article 112 of the Constitution, the Constitutional Court held that: "a special institution of judges, provided for in Paragraph 5 of Article 112 of the Constitution, should be interpreted as an important element of the self-governance of the judiciary, which is an independent branch of state power"; the said institution is "a counterbalance to the President of the Republic as a subject of the executive in the area of the formation of the corps of judges".

The appointment, promotion, and transfer of judges or their release from duties (Item 11 of Article 84, Paragraphs 2, 3, and 4 of Article 112 of the Constitution)

The Constitutional Court's ruling of 9 May 2006

Subjects who have the powers to appoint, promote, or release judges from their duties, as well as to transfer judges (change their places of work), are established in the Constitution. Under Paragraph 2 of Article 112 of the Constitution, the justices of the Supreme Court, as well as its President chosen from among them, are appointed and released by the Seimas upon submission by the President of the Republic; the judges of the Court of Appeal, as well as its President chosen from among them, are appointed by the President of the Republic upon the assent of the Seimas (Paragraph 3 of Article 112); the judges and presidents of district, regional, and specialised courts are appointed and their places of work are changed by the President of the Republic (Paragraph 4 of Article 112).

Paragraphs 2, 3 and 4 of Article 112 of the Constitution, which regulate the appointment, promotion, and transfer of judges or their release from duties, are related to Item 11 of Article 84 of the Constitution, under which the President of the Republic, *inter alia*: proposes candidates for the posts of the justices of the Supreme Court for consideration by the Seimas and, on the appointment of all the justices of the Supreme Court, proposes the candidate from among them for the post of the President of the Supreme Court to be appointed by the Seimas; appoints the judges of the Court of Appeal and, from among them, the President of the Court of Appeal, provided that the Seimas gives its assent to the candidates proposed; appoints the

judges and presidents of regional and district courts and changes their places of work; in cases provided for by law, submits that the Seimas release judges from their duties.

In this context, it should be mentioned that, even though Paragraph 3 of Article 112 of the Constitution *expressis verbis* regulates only the relationships of the appointment of the judges of the Court of Appeal and (after the judges of the Court of Appeal are appointed) the President of this Court, a systemic interpretation of this paragraph (when its provisions are related to Item 11 of Article 84 of the Constitution and to the constitutional principle of a state under the rule of law) implies that the judges of the Court of Appeal and the President of this court must be released from their duties under the same procedure as they are appointed, i.e. the President of the Republic has the powers to release them from their duties upon the assent of the Seimas.

It also needs to be mentioned that, under Articles 74 and 116 of the Constitution, certain judges of courts of general jurisdiction, namely the President and justices of the Supreme Court, the President and judges of the Court of Appeal (as well as 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 according to the procedure for impeachment proceedings.

It should be held that the Constitution establishes such a procedure for the appointment and release of the judges and presidents of courts of general jurisdiction of various levels where such judges and presidents of courts are appointed and released by the institutions of other branches of state power – executive power and legislative power; thus, they are appointed and released, respectively, by the President of the Republic and the Seimas, i.e. institutions that are formed on a political basis. The President of the Republic appoints and releases the judges and presidents of certain courts of general jurisdiction regarding which he/she does not have to apply to the Seimas; other judges and presidents of courts of general jurisdiction are appointed and released by the President of the Republic in such a manner that he/she must receive the assent of the Seimas beforehand; still, some other judges and presidents of courts of general jurisdiction are appointed and released by the Seimas, upon submission by the President of the Republic. It needs to be emphasised that the Seimas participates only in the appointment and release of the judges and presidents of courts of general jurisdiction of two highest levels and not of exclusively all courts; while the President of the Republic participates (in the ways established in Paragraphs 2, 3, and 4 of Article 112 and Item 11 of Article 84 of the Constitution) in the appointment and release of the judges of courts of general jurisdiction of all levels (from the lowest level – district courts – and until the highest level – the Supreme Court); however, his/her powers regarding judges of different courts of general jurisdiction are different: (1) in order to appoint or release a judge of a district or regional court or the president of a district or regional court, a decision of the President of the Republic is necessary, while the Seimas in this area does not have any powers under the Constitution; (2) in order to appoint or release a judge or the President the Court of Appeal, the President of the Republic must apply to the Seimas and, if the Seimas gives its assent, he/she may appoint a certain person as a judge or the President of the Court of Appeal or release a certain judge or the President of the Court of Appeal from duties; also, *inter alia*, if certain circumstances significant for such appointment or release from duties come to light, he/she may decide not to appoint that person as a judge or the President of the Court of Appeal and to propose another candidate to be approved by the Seimas, or not to release a certain judge or the President of the Court of Appeal from duties (if it is not obligatory to release that judge from duties under the Constitution; (3) in order to appoint or release a justice or President of the Supreme Court, the President of the Republic must propose that the Seimas appoint or release such a person, while the final decision on the appointment of the said person as a justice or the President of the Supreme Court or on his/her release from duties is adopted by the Seimas.

Item 11 (provisions on the appointment of judges and their release from duties) of Article 84 and Paragraphs 2, 3, and 4 of Article 112 of the Constitution must be interpreted inseparably from Paragraph 5 of Article 112 of the Constitution, which prescribes that a special institution of judges, as provided for by law, advises the President of the Republic on the appointment, promotion, and transfer of judges or their release from duties.

A special institution of judges, which is specified in Paragraph 5 of Article 112 of the Constitution; the legal consequences of advice given by this institution to the President of the Republic

The Constitutional Court's ruling of 9 May 2006

… the Constitutional Court … in its rulings of 21 December 1999, 13 December 2004, and 2 June 2005, also revealed certain elements of the status of a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution …

… the official constitutional doctrine that reveals the constitutional status of a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, is also developed in this ruling of the Constitutional Court from the *de lege ferenda* aspect so that the legislature, when regulating the relationships connected with the appointment, promotion, and transfer of judges or their release from duties, would not diverge from the constitutional concept of a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution.

… a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, also participates (thus, also has certain constitutional powers) in forming the corps of judges. In the area of the formation of the corps of judges, this special institution of judges (which … is an important element of the self-governance of the judiciary, which is an independent state power), is a counterbalance to the President of the Republic, who is a subject of executive power (rulings of 21 December 1999 and 13 December 2004). The fact the judiciary is fully fledged, autonomous, and independent, as well as the constitutional principle of the separation of powers, makes it impossible to interpret the constitutional mission and functions of the said special institution of judges in such a way that its role as a counterbalance to the President of the Republic in the area of the formation of the corps of judges would be denied or ignored. On the other hand, as mentioned before, the checks and balances that the judiciary (institutions thereof) and other state powers (institutions thereof) have with respect to each other may not be treated as the opposition mechanisms of the respective powers; thus, it would be unfair to interpret the constitutional mission of the said special institution of judges as meaning that the said special institution of judges is meant to be exclusively a counterbalance to the President of the Republic in the area of the formation of the corps of judges, because partnership and cooperation between the President of the Republic and this special institution of judges is also necessary while forming the corps of judges (in particular, when regard is paid to the constitutionally justifiable interest of society (which is defended under the Constitution) that the corps of judges be formed fairly and transparently and that persons for the position of a judge be chosen only on the basis of their professional preparation and such personal features and other circumstances that determine their suitability or unsuitability for this activity (for the position of a judge in a certain court)).

It should be emphasised in particular that a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, is a constitutional state institution (even though its exact title is not specified in the Constitution) (ruling of 13 December 2004). The phrase "institution of judges" of Paragraph 5 of Article 112 of the Constitution implies that this institution must be collegial. It is required that such a special institution of judges must be formed; the procedure and basis of its formation must be established by means of a law. The constitutional powers of this special institution of judges may not be taken or seized by any individual official (*inter alia*, by any judge or another official of judicial power or by the president of any court) or by any other institution. A special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, may not be treated as a body working on a pro-bono basis. It may not function in such a manner that the requirements of the due process of law would not be followed (in this special institution of judges itself and in relationships with other state institutions, *inter alia*, in relationships with the President of the Republic). Its decisions give rise to legal consequences.

In this context, it should be noted that, as the Constitutional Court held in its ruling of 21 December 1999, taking account of the procedure for the formation of courts established in the

Constitution, as well as the constitutional regulation of the relationships of the President of the Republic with a special institution of judges, which is provided for by law and is specified in Paragraph 5 of Article 112 of the Constitution, advice given by a special institution of judges, which is specified in Paragraph 5 of Article 112 of the Constitution, gives rise to legal effects: if this special institution of judges does not give advice, the President of the Republic may not adopt decisions on the appointment, promotion, and transfer of judges or their release from duties.

This doctrinal provision means, *inter alia*, that advice given by a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, must not be interpreted as a recommendation for the President of the Republic that he/she should appoint or not appoint a person as a judge, that he/she should promote or not promote a judge, that he/she should transfer or not transfer a judge, or that he/she should release or not release a judge from duties. Far from it, i.e. if the said advice were only a recommendation, a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, would not perform one of the functions of the counterbalances of judicial power to executive power and, while forming the corps of judges, executive power would dominate judicial power; thus, there would be grounds for stating that certain preconditions are also created for the violation of the independence of judges and courts (violation of the independence of judges and courts is not precluded).

It should be noted that the legal consequences of advice given by a special institution of judges, which is provided for by law and is specified in Paragraph 5 of Article 112 of the Constitution, to the President of the Republic depend on the fact whether the President of the Republic applies to this institution regarding the appointment of a judge or his/her promotion, transfer, or release from duties.

Advice given by a special institution of judges, which is specified in Paragraph 5 of Article 112 of the Constitution, to the President of the Republic on the appointment, promotion, or transfer of judges

The Constitutional Court's ruling of 9 May 2006

In cases where the President of the Republic applies to a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, for advice regarding the appointment, promotion, or transfer of a judge, and this special institution of judges advises the President of the Republic to appoint a person as a judge, to promote a judge, or to transfer him/her, such advice is not binding on the President of the Republic. This means that the President of the Republic (*inter alia*, if certain circumstances significant for such appointment or release from duties become clear) may decide not to appoint a person as a judge, not to promote a judge, or not to transfer him/her (and, if a judge of the Supreme Court or the Court of Appeal is appointed, promoted, or transferred, the President of the Republic may decide not to propose him/her as a candidate to be approved by the Seimas). Under the Constitution, in such cases, the President of the Republic may apply to a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, for advice regarding the appointment of another person as a judge, or the promotion or transfer of another judge.

Different legal consequences of advice given by a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, to the President of the Republic arise when the President of the Republic applies to this special institution of judges regarding the appointment, promotion, or transfer of a judge and it *expressis verbis* advises the President of the Republic not to appoint a certain person as a judge, not to promote or not to transfer a certain judge, or the said special institution of judges replies to the President of the Republic that it does not advise him/her to appoint a certain person as a judge, promote a certain judge, or transfer him/her. It should be emphasised that such "non-advice" for the President of the Republic regarding the appointment of a person as a judge, the promotion or transfer of a judge, no matter in what way it is expressed in a particular act of the said special institution of judges, is legally equal to the *expressis verbis* formulated advice that the President of the Republic should not appoint a person as a judge, should not promote a judge, and should not transfer him/her. Under the Constitution, in such cases, the President of the Republic may not (respectively) appoint a person in question as a judge, or

promote or transfer a judge (and, if a judge of the Supreme Court or the Court of Appeal is appointed, promoted, or transferred, the President of the Republic may not propose such a person as a candidate to be approved by the Seimas). A different interpretation (*inter alia*, such that the President of the Republic may disregard the said advice and still appoint a person in question as a judge, transfer or promote a judge (and, if a judge of the Supreme Court or the Court of Appeal is appointed, promoted, or transferred, the President of the Republic may propose him/her as a candidate to be approved by the Seimas)) of the legal force and legal circumstances of the advice of the said special institution of judges that the President of the Republic should not appoint a person as a judge and should not promote or transfer a judge would mean that a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, which is formed only on a professional basis, is not a counterbalance to the President of the Republic – a political institution of state power – in the area of the formation of the corps of judges; such an interpretation would also be inconsistent with the principle of the independence of judges and courts and with the balance of state powers consolidated in the Constitution.

Advice given by a special institution of judges, which is specified in Paragraph 5 of Article 112 of the Constitution, to the President of the Republic on the release of judges from their duties (Article 115 of the Constitution)

The Constitutional Court's ruling of 9 May 2006

Still, other different legal consequences of advice given by a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, to the President of the Republic arise when the President of the Republic applies to this special institution of judges for advice on the release of a judge from duties.

Article 115 of the Constitution prescribes:

"The judges of the courts of the Republic of Lithuania shall be released from their duties according to the procedure established by law in the following cases:

(1) of their own will;

(2) upon the expiry of the term of powers, or upon reaching the pensionable age established by law;

(3) due to their state of health;

(4) upon election to another office, or upon transfer, with their consent, to another place of work;

(5) when their conduct discredits the name of judges;

(6) upon the entry into effect of court judgments convicting them."

While interpreting the legal regulation laid down in Article 115 of the Constitution, it should be held that the grounds for release of a judge from duties are established in the said article (rulings of 22 December 1994 and 6 December 1995). Under this article, judges are released from their duties in the following cases: when a judge himself/herself, without anybody forcing him/her (of his/her own will) requests to be released from duties, i.e. he/she resigns (Item 1 of Article 115 of the Constitution); upon the expiry of the term of powers or upon reaching the pensionable age established by law (Item 2 of Article 115 of the Constitution); when the state of health of a judge is such that he/she cannot perform the duties of a judge (Item 3 of Article 115 of the Constitution); upon election to another office or upon transfer, with his/her consent, to another place of work (Item 4 of Article 115 of the Constitution); when his/her conduct discredits the name of judges (Item 5 of Article 115 of the Constitution); and upon the entry into effect of a court judgment convicting him/her (Item 6 of Article 115 of the Constitution). The cases and grounds for the release of a judge from duties established in Article 115 of the Constitution differ, *inter alia*, by the fact that some of them (expiry of the term of powers or reaching the pensionable age established by law, as provided for in Item 2 of Article 115 of the Constitution; the entry into effect of a court judgment convicting him/her, as provided for in Item 6 of Article 115 of the Constitution) are related only to the establishment (statement) of the fact of objective nature, while others (resignation – an application to be released from duties, as provided for in Item 1 of Article 115 of the Constitution; the state of health not allowing him/her to perform the duties of a judge, as provided for in Item 3 of Article 115 of the Constitution; election to another office

or his/her transfer, with his/her consent, to another place of work, as provided for in Item 4 of Article 115 of the Constitution; and conduct discrediting the name of judges, as provided for in Item 5 of Article 115 of the Constitution) imply not only the establishment (statement) of the respective facts, but also their assessment.

It is clear that, in cases where the President of the Republic applies to a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, so that the said institution of judges would advise him/her on the release of a judge from duties because his/her term of powers has expired or he/she reached the pensionable age established by law, or a court judgment convicting him/her has come into effect, the said special institution of judges must make sure whether the specified facts actually exist and, if they do, it must advise the President of the Republic to release a judge in question from duties. It should be emphasised that, if a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, establishes that the said objective facts really exist, it, under the Constitution, is not allowed not to advise the President of the Republic to release a judge from duties, and the President of the Republic, when he/she receives such advice, must release a judge in question from duties (if a judge to be released from duties is a justice of the Supreme Court, the President of the Republic must propose that the Seimas release such a justice from duties, and if a judge to be released from duties is a judge of the Court of Appeal, the President of the Republic must request assent from the Seimas in order to release him/her from duties). It should be held that, under the Constitution, in such cases, a judge in question must be released from duties.

[…]

Meanwhile, in cases where the President of the Republic applies to a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, so that it would advise him/her on the release of a judge from his/her duties, as there is one of the grounds (or several such grounds) provided for in Items 1, 3, 4, and 5 of Article 115 of the Constitution, the said special institution of judges must (accordingly) not only make sure that a judge requests to be released from duties, but also assess whether he/she is doing so of his/her own will and whether he/she is forced to do so (Item 1 of Article 115 of the Constitution), it must not only make sure that a judge has health problems, but also assess in accordance with the procedure established by law whether his/her state of health is such that he/she cannot perform the duties of a judge (Item 3 of Article 115 of the Constitution); the said special institution of judges must not only make sure that a judge has been elected to another office or transferred to another place of work, but also assess whether he/she has been elected to this office or transferred to another place of work with his/her consent (Item 4 of Article 115 of the Constitution), it must not only make sure that a judge has engaged in certain conduct (act), but also to assess whether his/her conduct (act) really discredited the name of judges (Item 5 of Article 115 of the Constitution). If (accordingly) a judge really of his/her own will requests to be released from his/her duties, his/her state of health is really such that he/she may not perform the duties of a judge, he/she has really been elected to another office or transferred to another place of work with his/her consent, or has really discredited the name of judges by his/her conduct, a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, must advise the President of the Republic to release the judge in question from duties. It should be emphasised that, in such cases, the said special institution of judges is not allowed not to advise the President of the Republic to release a judge from duties, and the President of the Republic, after he/she has received such advice, has the powers to release a judge from his/her duties (if a justice of the Supreme Court is released from duties, the President of the Republic has the powers to propose that the Seimas release him/her from duties and, if a judge of the Court of Appeal is released from duties, the President of the Republic has the powers to request assent from the Seimas in order to release him/her from duties); this must be done without delay. But, if a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, holds that (accordingly), even though a judge formally requests to be released from duties of his/her own will, in reality he/she is doing so after he/she has experienced someone’s unlawful influence, he/she is under pressure, or is in any other way impermissibly urged by certain persons or organisations (institutions), that, even though a judge has health problems, his/her state of health is not such

that he/she would not be able to perform the duties of a judge, that, even though a judge has been elected to another office or transferred to another place of work, it has been done without his/her consent, that, even though a judge has been engaged in certain conduct (act), the said conduct (act) has not discredited the name of judges, the said special institution of judges must not advise the President of the Republic to release the judge in question from duties, and the President of the Republic, when he/she does not receive the advice that such a judge should be released from duties, must not release him/her from duties.

On the other hand, in general, such situations (although, they are very rare) are also possible where, after the President of the Republic has already applied to a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, for advice regarding the release of a judge from duties and after this institution has already advised the President of the Republic to release the judge in question from duties, the grounds on which the said judge must be released from duties disappear. For instance, a judge, after he has stated that he/she intends to resign, may apply to and request the President of the Republic not to release him/her from duties if certain circumstances have changed. In such (exceptional) cases, the President of the Republic has certain freedom of discretion.

It should be emphasised that the impossibility (which arises from the Constitution) for the President of the Republic to release a judge from duties (if a judge to be released from duties is a justice of the Supreme Court, the impossibility for the President of the Republic to propose that the Seimas release him/her from duties and, if a judge to be released from duties is a judge of the Court of Appeal, the impossibility for the President of the Republic to request assent from the Seimas in order to release him/her from duties) without the advice of a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, is a very important guarantee of the independence of judges and courts, and one of the means that helps judges of all courts of general jurisdiction (as well as judges of all specialised courts established under Paragraph 2 of Article 111 of the Constitution) with no exception to protect themselves from the interference of state power and governance institutions, members of the Seimas and other officials, political parties, political and public organisations, and other persons with the activities of judges or courts, since such interference is *expressis verbis* prohibited (and for such interference the legislature is obliged to provide responsibility) under Paragraph 1 of Article 114 of the Constitution.

A special institution of judges, which is specified in Paragraph 5 of Article 112 of the Constitution, does not have the powers to give advice to the President of the Republic on the release of a judge from duties in cases where he/she is appointed as a justice of the Constitutional Court or as a member of the Government

The Constitutional Court's ruling of 9 May 2006

In its ruling of 21 December 1999, the Constitutional Court held that, taking account of the procedure of the formation of courts that is established in the Constitution, as well as the constitutional regulation of relationships between the President of the Republic and a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, this special institution of judges must advise the President of the Republic on all questions of the appointment of judges, their professional career, as well as on those of their release from duties.

This does not mean that certain exceptions do not stem from the Constitution where it is possible not to apply to this institution on such advice.

When interpreting the quoted provisions of the official constitutional doctrine in the context of other provisions of the Constitution, the Constitutional Court held in its ruling of 2 June 2005 that, under the Constitution, a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, also has no powers to deny or limit the constitutional right of the President of the Republic, the Speaker of the Seimas, and the President of the Supreme Court to present to the Seimas a candidate for the post of a justice of the Constitutional Court and the right of the Seimas to appoint a presented person as a justice of the Constitutional Court or not to appoint him/her, as in such a way the preconditions would be created for impeding the renewal of the Constitutional Court – one of the institutions

of state power consolidated in the Constitution. In the said ruling of the Constitutional Court, it was also held that "if such a person is appointed as a justice of the Constitutional Court who 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 such a person is appointed as a justice of the Constitutional Court who 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 present 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 – carried out in accordance with the procedure established in the Constitution would be impeded." It was also held in the Constitutional Court's ruling of 2 June 2005 that "under the Constitution, no institution or official has the powers to deny or limit the constitutional right of the Seimas to appoint a nominated person as a justice of the Constitutional Court or not to appoint him/her. … When the justices of the Constitutional Court are appointed, only the state officials who submit candidates to the Seimas and the Seimas have respective powers. … a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution … does not have, under the Constitution, any powers to adopt any decisions related to the appointment of the justices of the Constitutional Court. Thus, under the Constitution, this institution does not have the powers to advise on the release of any judge of the Republic of Lithuania from duties in cases where this judge has been appointed as a justice of the Constitutional Court by the Seimas. … The cited statements that 'a special institution of judges, specified in Paragraph 5 of Article 112 of the Constitution, must advise the President of the Republic on all questions of the appointment of judges, those of their professional career, as well as those of their release from duties' and that 'advice given by this institution gives rise to legal consequences: if this institution does not give advice, the President of the Republic may not adopt decisions on the appointment, promotion, and transfer of judges or their release from duties' of the Constitutional Court's ruling of 21 December 1999 may not be interpreted without taking account of the provisions of the Constitution regulating the procedure for the appointment of the justices of the Constitutional Court. … before adopting a decision on release from duties of any judge of a court of the Republic of Lithuania who is appointed as a justice of the Constitutional Court, the President of the Republic need not, under the Constitution, apply to a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution … for advice, while the said institution, under the Constitution, does not have the powers to give advice to the President of the Republic on this issue. Otherwise, the preconditions would be created for the said special institution of judges … for impeding an appointed justice of the Constitutional Court 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 – carried out in accordance with the procedure established in the Constitution, as well as the implementation of a resolution of the Seimas on the appointment of a justice of the Constitutional Court, would be impeded."

On the basis of analogous arguments, it should be held that, under the Constitution, a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, also has no powers to advise the President of the Republic on the release of a judge from duties in such cases where a judge of any court of the Republic of Lithuania is appointed to another office in cases of forming some other state institution established in Paragraph 1 of Article 5 of the Constitution, which executes state power in Lithuania (except courts of general jurisdiction and specialised courts (established under Paragraph 2 of Article 111 of the Constitution) regarding which explicit provisions are consolidated in the Constitution establishing particular powers of the said special institution of judges to give advice to the President of the Republic).

In view of the fact that, under the Constitution, a judge has no right to be elected a member of the Seimas or the President of the Republic as long as such a judge holds a particular office (ruling of 25 May 2004), it should be held that, under the Constitution, a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, does not have the powers to advise the President of the Republic on the release of a judge from duties in cases where a judge who is released from duties is a judge of a certain court of the Republic of Lithuania appointed as a justice of the Constitutional Court, as well as in cases where a judge who is released from duties is a judge of a certain court of the Republic of Lithuania who (when the Government is formed or its composition is changed) is appointed as a member of the Government (Prime Minister or a minister).

A special institution of judges, which is specified in Paragraph 5 of Article 112 of the Constitution, does not have the powers to give advice on the release of a judge from duties through impeachment proceedings

The Constitutional Court's ruling of 9 May 2006

… under Articles 74 and 116 of the Constitution, for a gross violation of the Constitution or a breach of the oath, or when they are found to have committed a crime, the President and justices of the Supreme Court, as well as the President and judges of the Court of Appeal (as well as the President and justices of the Constitutional Court), may be removed from office according to the procedure for impeachment proceedings.

Under the Constitution, in such cases, a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, does not have any powers to advise the Seimas whether to remove the President or a justice of the Supreme Court, the President or a judge of the Court of Appeal from office according to the procedure for impeachment proceedings. In such cases, the Constitutional Court – an institution of judicial power – is a counterbalance to decisions of the Seimas – a political institution (conclusion of 31 March 2004).

The application of the President of the Republic to a special institution of judges, which is specified in Paragraph 5 of Article 112 of the Constitution, for advice on the appointment, promotion, and transfer of judges or their release from duties

The Constitutional Court's ruling of 9 May 2006

… under the Constitution, advice given by a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 thereof, is necessary when appointing, promoting, transferring, or releasing from duties any judge or the president of a court of general jurisdiction (as well as a judge of a specialised court, established under Paragraph 2 of Article 111 of the Constitution), save the … exceptions, which stem from the Constitution, when the President of the Republic need not apply for such advice because a judge is released from duties due to the fact that he/she is appointed as a member of the Government (Prime Minister or a minister) or as a justice of the Constitutional Court, as well as when the President or a justice of the Supreme Court and the President or a judge of the Court of Appeal is removed from office according to the procedure for impeachment proceedings. Thus, the President of the Republic must receive such advice also in cases where a judge (of a district or regional court) is appointed or released from duties only by a decision of the President of the Republic, when the Seimas does not participate in general, and in such cases where the President of the Republic applies to the Seimas for assent concerning the appointment or release from duties of a judge or the President of the Court of Appeal, and in such cases where the President of the Republic proposes that the Seimas appoint or release from duties a justice or the President of the Supreme Court. In all these cases (save the discussed exceptions, which stem from the Constitution itself), advice given by a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, is obligatory for the President of the Republic – this is an inseparable, constitutionally obligatory part of the procedure for appointment, promotion (i.e. appointment as a judge of higher level while releasing from previous duties or appointment to a leading or higher post at the same court), transfer (change of the place of work) of judges, and their release from duties. If the President of the Republic has

not received such advice, he/she may not appoint or release from duties a judge or President of a district or regional court, may not apply to the Seimas for assent concerning the appointment or release from duties a judge or the President of the Court of Appeal, and may not propose that the Seimas appoint or release from duties a justice or the President of the Supreme Court.

It needs also to be emphasised that the constitutional institution consolidated in Paragraph 5 of Article 112 of the Constitution – the application of the President of the Republic to a special institution of judges, as provided for by law and specified in the same paragraph, for advice concerning the appointment, promotion, and transfer of judges or their release from duties means not only that the President of the Republic has the duty to apply to a special institution of judges, specified in this paragraph, for the respective advice when there is a need to appoint, promote, or transfer a judge or release him/her from duties, but also that this special institution of judges, when it receives an application of the President of the Republic, has the constitutional duty to consider such an application and to advise the President of the Republic (accordingly) to appoint a person as a judge of a district or regional court, to promote or transfer a judge of a district or regional court or release him/her from duties, to apply to the Seimas for assent concerning the appointment, promotion, and transfer of a judge or the President of the Court of Appeal or his/her release from duties, to submit that the Seimas appoint, promote, or transfer a justice of the Supreme Court or release him/her from duties, or to submit that the Seimas appoint or transfer the President of the Supreme Court or release him/her from duties, or to advise the President of the Republic not to appoint a person as a judge of a district or regional court, not to promote or not to transfer a judge of a district or regional court, or not to release him/her from duties, not to apply to the Seimas for assent concerning the appointment, promotion, and transfer of a judge or the President of the Court of Appeal or his/her release from duties, or not to submit that the Seimas appoint, promote, or transfer a justice of the Supreme Court or release him/her from duties, or not to submit that the Seimas appoint or transfer the President of the Supreme Court or release him/her from duties. When such advice must be given, it is necessary to strictly follow the requirements of the due process of law and to assess the professional preparation of certain persons and such personal qualities (as well as other circumstances) that determine their suitability or unsuitability for the respective position (or for work as a judge in general).

It should be noted that the Constitution does not provide and does not tolerate any such a situation where a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 thereof, does not give any advice to the President of the Republic after he/she applies to this special institution of judges for advice concerning the appointment, promotion, and transfer of judges or their release from duties, or when it advises the President of the Republic not on the issue concerning which the President of the Republic has applied; under the Constitution, the said special institution of judges must clearly and unambiguously advise the President of the Republic (accordingly) to appoint a person as a judge, promote or transfer a judge or release him/her from duties (and, if a justice of the Supreme Court or a judge of the Court of Appeal is released from duties, the said special institution of judges must advise the President of the Republic to submit that the Seimas appoint or release him/her from duties) or to advise not to appoint a person as a judge, not to promote or not to transfer him/her, or not to release him/her from duties (and, if a justice of the Supreme Court or a judge of the Court of Appeal is appointed, promoted, transferred, or released from duties, the said special institution of judges must advise the President of the Republic not to submit that the Seimas appoint or release him/her from duties).

It should also be noted that, under the Constitution, also such legal situations are impossible where a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, advises the President of the Republic concerning the appointment of a certain person as a judge, the promotion or transfer of a judge, or his/her release from duties on its own initiative, even though the President of the Republic has not applied to it on such an issue. The said institution may implement the powers established in Paragraph 5 of Article 112 of the Constitution only when (after) the President of the Republic applies to it for advice.

[…]

Attention must also be paid to the fact that, under the Constitution, it is not allowed to establish any such a legal regulation where the President of the Republic, before he/she applies to a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, for advice concerning the appointment, promotion, and transfer of judges or their release from duties would have to coordinate such application with a certain state institution, a certain state official, another institution, or any other person. Under the Constitution, decisions of state institutions, state officials, other institutions, or any other persons may not become binding, nor are they binding, on the application of the President of the Republic to the said special institution of judges for advice.

It is also not allowed to establish, by means of a law, any such a legal regulation whereby, while applying to a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, for advice concerning the appointment of a person as a judge, or the promotion or transfer of a judge, the President of the Republic would be obliged to submit to this special institution of judges not one, but more candidates for the same vacancy, and where the said special institution of judges would have to and/or be able to choose from persons submitted by the President of the Republic and to advise the President of the Republic concerning the appointment of such a person as a judge, or his/her promotion or transfer.

… the Constitution does not imply the possibility of establishing any such a legal regulation whereby persons who pass the required examination or examinations and are included in the list of candidates for the post of a judge would be somehow rated, their priority or different lists would be drawn, etc., which would be binding on the President of the Republic when he/she would apply to a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, for advice concerning the appointment of judges. It also needs to be emphasised that the President of the Republic may choose persons concerning the appointment of whom as judges he/she applies to a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, only from those who have passed the required examination or examinations and are included in the list of candidates for the post of a judge, or from other persons who may hold the office of a judge without examinations if this is constitutionally justifiable.

[…]

As, under the Constitution, only the President of the Republic may apply for advice to a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 thereof, the President of the Republic, before applying for the said advice, after he/she has made use of the possibilities established by law (*inter alia*, after the President of the Republic has demanded the respective information from state institutions (officials)), must verify and assess all significant circumstances, *inter alia*, the fact whether a person who is proposed to be appointed as a judge, or a judge proposed to be transferred or promoted meets the requirements established for a judge (as well as for a judge of a court of the same system of courts or of a court of the same level), whether he/she has qualification necessary for particular work, is of impeccable reputation, and whether there are any other circumstances due to which a person may not be appointed as a judge, or may not be promoted or transferred (or may not be appointed namely as a judge of the court specified by the President of the Republic, may not be promoted by appointing him/her namely to the specified court, or may not be transferred namely to the specified court).

Under Article 85 of the Constitution, the President of the Republic, implementing the powers vested in him/her, issues acts-decrees. The constitutional powers of the President of the Republic to apply to a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, for advice concerning the appointment, promotion, and transfer of judges or their release from duties are implemented by issuing the respective decree of the President of the Republic. In such a decree of the President of the Republic, the time period within which advice must be received may also be specified. If such a time period is specified in a decree of the President of the Republic, a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, must observe the said time period.

The transparency requirement for the activity of a special institution of judges, which is specified in Paragraph 5 of Article 112 of the Constitution

The Constitutional Court's ruling of 9 May 2006

… a special institution of judges, provided for by law specified in Paragraph 5 of Article 112 of the Constitution, is a counterbalance to the President of the Republic – a political institution of state power – in the area of the formation of the corps of judges. This implies that the activity of this special institution of judges must be transparent so that neither the President of the Republic nor society would have reasoned doubts regarding the formed corps of judges, as then public trust in law and in the legal system of the state would in general decrease; thus, advice given by the said special institution of judges to the President of the Republic must be rationally argued and reasons due to which it advises the President of the Republic to appoint a certain person as a judge, promote or transfer a judge, or release him/her from duties or not to appoint a person as a judge, not to promote, not to transfer a judge, and not to release a judge from duties (and, if a justice of the Supreme Court or a judge of the Court of Appeal is appointed, promoted, transferred, or released from duties, the said special institution of judges advises the President of the Republic to propose or not to propose him/her as a candidate to be approved by the Seimas) must be set out clearly. No advice (or other decisions) of the said special institution of judges may be based on assumptions, subjective prejudice, or opinions of members of the said special institution of judges, it is necessary to ground such advice only upon established (elucidated) facts after assessing the professional preparation of certain persons and such personal qualities (as well as other circumstances) that determine their suitability or unsuitability for the respective position (or for work as a judge in general). In this context, it should be noted that, taking account of the fact that public trust in law and in the legal system of the state virtually depends on the activity and decisions of the said special institution of judges, the legislature, while regulating relationships linked to the activity of the said special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, may also establish such a legal regulation whereby, if the said special institution of judges irresponsibly implemented the powers established for it in the Constitution, its composition could be changed in essence; the establishment of such a legal regulation implies that the procedure for settling disputes that may arise due to particular decisions must also be established; when establishing the said legal regulation, the legislature must pay regard to the Constitution.

Constitutional requirements for the formation, activity, and work organisation of a special institution of judges, which is specified in Paragraph 5 of Article 112 of the Constitution

The Constitutional Court's ruling of 9 May 2006

Taking account of the mission and constitutional status of a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, as well as of an exclusive role of the said institution in the procedure of the formation of the corps of judges, it needs to be held that certain requirements stem from the Constitution concerning the activity of this state institution and the organisation of its work.

For instance, before advising the President of the Republic on the appointment, promotion, and transfer of a judge of a certain court of general jurisdiction or a specialised court, established under Paragraph 2 of Article 111 of the Constitution, or on releasing him/her from duties, the said special institution of judges has the duty to elucidate and assess all significant circumstances, *inter alia*, the fact whether a person who is proposed to be appointed as a judge, or a judge proposed to be transferred or promoted meets requirements established for a judge (as well as for a judge of a court of the same system of courts or a court of the same level), whether he/she has qualification necessary for particular work, whether he/she is of impeccable reputation, and whether there are any other circumstances due to which a person may not be appointed as a judge or may not be promoted or transferred (or may not be appointed namely as a judge of the court specified by the President of the Republic, or may not be promoted by appointing him/her namely to the specified court, or may not be transferred namely to the specified court). The legislature has the duty to establish such a legal regulation that the said special institution of judges would have the powers to receive all necessary

information from state and municipal institutions (officials thereof) that would allow verifying and assessing all significant circumstances. Responsibility for giving advice to the President of the Republic falls namely on the said special institution of judges to which the President of the Republic applies for advice. The fact that, as it has been held in this ruling of the Constitutional Court, the President of the Republic, before applying to this special institution of judges for advice, must make use of the possibilities established by law and verify and assess all significant circumstances does not relieve the said special institution of judges from this duty and responsibility.

It is clear that the members of a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, must verify and assess all significant circumstances, *inter alia*, the fact whether a person who is proposed to be appointed as a judge, or a judge proposed to be transferred or promoted meets requirements established for a judge (as well as for a judge of a court of the same system of courts or of a court of the same level), whether he/she has qualification necessary for particular work, whether he/she is of impeccable reputation, and whether there are any other circumstances due to which a person may not be appointed as a judge, or promoted and transferred (or appointed namely as a judge of a court specified by the President of the Republic, promoted appointing him/her namely to a specified court, transferred him/her namely to a specified court) only when they receive in advance all information necessary in order to consider a certain question, have the possibility of investigating it attentively, may demand additional information if necessary, etc. The work of the said special institution of judges may not be organised in such a way that certain information concerning a considered question would be provided not on time and not in advance, but only at a meeting of this special institution of judges, as well as that certain information concerning a considered question would be provided not to all members of this special institution of judges, but only to some of them (selectively), for example, only to those members of this special institution of judges who participate in that meeting. In this context, particularly taking account of the fact that, under the Constitution, the President of the Republic must receive advice namely from a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, as a collegial state institution, and not from part of it (i.e. a group of judges) concerning the appointment, promotion, and transfer of a judge or his/her release from duties, it should be noted that, in general, it would not be possible to consider the activity of the said special institution of judges, which, as it has been held in this ruling of the Constitutional Court, is a state institution provided for in the Constitution and not a certain body working on a pro-bono basis, as fully conforming to its constitutional mission if a large number of its members did not participate in its meetings. It should also be noted that the work of the said special institution of judges must be organised in such a way that voting on every advice to the President of the Republic during a meeting would take place, that, after such voting is over, every member of this special institution of judges would know how every other member of this special institution of judges voted, and that the results of voting would not raise any doubts regarding their reliability. Failure to pay regard to the said provisions would mean that the requirements of the due process of law, which are binding in a state under the rule of law, are deviated from in essence.

It should be particularly emphasised that the mission and constitutional status of a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, an exclusive role of the said institution in the procedure of the formation of the corps of judges, as well as the transparency requirement for its activity, imply the publicity of the activity of this special institution of judges. The fact that the activity of the said special institution of judges must be public means that, in addition to other things, society (as well as the legal community) must be informed in advance (it should be publicly announced) about all questions on the appointment, promotion, and transfer of a judge or his/her release from duties to be considered by this special institution of judges. It has been held in this ruling of the Constitutional Court that advice given by the said special institution of judges to the President of the Republic must be argued rationally and reasons must be set out clearly due to which it advises the President of the Republic to appoint a certain person as a judge, to promote or transfer a judge, or to release him/her from office or not to appoint a person as a judge, not to promote, or not to release a judge from duties (and, if a justice of the Supreme

Court or a judge of the Court of Appeal is appointed, promoted, or transferred or released from duties, the said special institution of judges advises the President of the Republic to propose or not to propose him/her as a candidate to be approved by the Seimas). These arguments and reasons must be set out clearly. Society must be informed about adopted decisions (about advice to the President of the Republic). It should also be emphasised that, when the President of the Republic applies for advice, each member of the said special institution of judges must declare his/her position on each question clearly and unambiguously.

Only the following powers of a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, are explicitly consolidated in the Constitution (Paragraph 5 of Article 112 thereof): when the President of the Republic applies to the said institution, it must advise him/her on the appointment, promotion, and transfer of judges or their release from duties, i.e. as held in the Constitutional Court's ruling of 21 December 1999, "concerning all questions of the appointment of judges, those of their professional career, as well as those of their release from duties", save (as held in the Constitutional Court's ruling of 2 June 2005 and in this ruling of the Constitutional Court) the exceptions that stem from the Constitution itself (of which there are very few). It should be emphasised that no other institution, official, or any other person may exercise these powers; the said powers may not be transferred to anybody by a special institution of judges itself, which is provided for by law and is specified in Paragraph 5 of Article 112 of the Constitution. If this were the case and if the legislature also restricted the powers explicitly assigned to such a special institution of judges in the Constitution, then not only Paragraph 5 of Article 112 of the Constitution, but also Paragraph 2 of Article 5 of the Constitution, under which the scope of powers is limited by the Constitution, as well as the constitutional principle of a state under the rule of law, would be violated.

It should be emphasised that the interpretation of the meaning of the phrase "a special institution of judges shall advise" of Paragraph 5 of Article 112 of the Constitution may not be based only on the verbal and literal interpretation of the notions used therein; this phrase should be interpreted by taking account of the procedure for the formation of the corps of judges, which is consolidated in various articles (paragraphs thereof) of the Constitution, under which different powers are established for state power institutions and other institutions that participate in the formation of the corps of judges: the Seimas or the President of the Republic – political institutions – appoint judges and release them from their duties, while an institution of the judiciary, i.e. an autonomous and self-governing institution of independent state power, which, as judicial power in general, is not political, but only professional, gives advice to the President of the Republic on the appointment, promotion, and transfer of judges or their release from duties.

Thus, the phrase "a special institution of judges shall advise" of Paragraph 5 of Article 112 of the Constitution means that, firstly, the said state institution must be composed for the purpose specified in this paragraph – to advise the President of the Republic on the appointment, promotion, and transfer of judges or their release from duties; secondly, this state institution must be composed only of judges. It should be held that, under the Constitution, no other institution, official, or any other person may have the powers to advise the President of the Republic on the appointment, promotion, and transfer of judges or their release from duties; in addition, under the Constitution, the institution specified in Paragraph 5 of Article 112 of the Constitution may be composed not of any persons (members), but only of judges; otherwise, i.e. if this institution were composed not of judges or not exclusively of judges, the constitutional concept (that, during the formation of the corps of judges, the said special institution of judges is a counterbalance to the President of the Republic – a political institution) of the state institution – a special institution of judges – that is consolidated in this paragraph would be disregarded; under the Constitution, such an institution may not have the powers specified in Paragraph 5 of Article 112 of the Constitution to advise the President of the Republic on the appointment, promotion, and transfer of judges or their release from duties. Only an institution that is formed on a professional basis, i.e. a special institution of judges, may properly assess whether the professional qualification of a person is such that he/she may be appointed as a judge, whether a person who already is a judge may be promoted, etc. Only an institution formed on a professional basis, i.e. a special institution of judges, may be a counterbalance to the President of the Republic – a subject of

executive power and a political institution – in the formation of the corps of judges. Only such an institution may ensure the independence of judges and courts, *inter alia*, from the aspect that judges of all courts with no exception would be protected from interference by state power and government institutions, members of the Seimas and other officials, political parties, political and public organisations in the activity of judges or courts (… such interference is *expressis verbis* prohibited by Paragraph 1 of Article 114 of the Constitution). The phrase "a special institution of judges shall advise" may not be interpreted expansively as meaning that it also does not prohibit the establishment of such a legal regulation whereby it would be possible to include not exclusively judges to this institution of judges, because such an expansive interpretation of the constitutional expression "a special institution of judges shall advise" and the legal regulation based on it would create the preconditions for disregarding the principle of the independence of courts (which also includes the self-governance of judicial power), which is consolidated in the Constitution, *inter alia*, from the aspect that the President of the Republic would be advised on the appointment, promotion, and transfer of judges or their release from duties by an institution that would be composed not only of judges, but also of other persons (even politicians), which would be unable to assess from the professional point of view whether persons aspiring to become judges meet requirements established for a judge, *inter alia*, whether such persons have professional qualification necessary for the office of a judge, whether a judge has sufficient professional qualification in order to be promoted, etc. By such a legal regulation where a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, would be composed not only of judges but also other persons, not only the constitutional concept of a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, but also Paragraph 2 of Article 5 of the Constitution, in which it is prescribed that the scope of powers is limited by the Constitution, as well as the constitutional principle of a state under the rule of law, would be disregarded.

The phrase "a special institution of judges, as provided for by law" of Paragraph 5 of Article 112 of the Constitution means that the legislature has broad discretion to regulate in one or another way the formation, powers, and activity of this state institution – a special institution of judges provided for in this paragraph (of course, paying regard to the Constitution, *inter alia*, the constitutional concept of the said special institution of judges). …

[…]

It has been mentioned that, under the Constitution, the legislature has the powers to establish the procedure for the formation of a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution. Such a procedure must be established in the Law on Courts. While establishing such a procedure, the legislature may not disregard, *inter alia*, the circumstance that no official of judicial power may be treated as the head of whole judicial power or as a representative thereof in relationships with other state powers and that, under the Constitution, self-governing judicial power may not be too centralised in general. The independence of judges, which is consolidated in the Constitution, implies the equal legal status of all judges while administering justice: it is not allowed to establish different guarantees of the independence of judges when they administer justice (decide cases); while administering justice, no judge is or may be subordinate to any other judge or the president of any court (*inter alia*, of a court where he/she works, as well as of a court of higher level or instance). It is also necessary to pay regard to the circumstance that the self-governance of the judiciary as an independent state power and the equal legal status of judges also imply, *inter alia*, the fact that, in judicial self-governance institutions, all judges have an equal legal status; thus, in self-governance institutions of judicial power they are equal and not subordinate to any other judge (or to a judge or the president of a court of higher level or instance). Thus, in self-governance institutions of judicial power, no judge may have more rights than any other judge. Thus, under the Constitution, the legislature may not consolidate any such a legal regulation that a certain judge *ex officio* (by virtue of his/her office) could become the head of a special institution of judges, which is provided for by law and is specified in Paragraph 5 of Article 112 of the Constitution. It should be held that the Constitution tolerates only such election procedure of the head (person holding chairmanship) of a special

institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, where the head (person holding chairmanship) of this special institution of judges is elected by members of this institution themselves or at a democratically convened meeting of judges (or representatives thereof) (which may also elect members of this special institution of judges). A different legal regulation, i.e. such that a certain judge (president of a certain court) is *ex officio* the head of a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, would not be in line, *inter alia*, with the principle of self-governance of the judiciary as one of state powers consolidated in the Constitution, as well as with the constitutional principle of a state under the rule of law.

In this context, it should be noted that also the rotational heading (chairmanship) of the said special institution of judges would be in line with the principle of self-governance of the judiciary as one of state powers consolidated in the Constitution and with the decentralisation of self-governing judicial power.

The possibility of certain judges *ex officio* to be members of a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, should be assessed in a slightly different way.

The said constitutional imperatives (the decentralisation of self-governing judicial power, the independence of judges, the equal status of all judges who administer justice, the non-subordination of a judge to any other judge or the president of any other court while administering justice, etc.) imply a democratic procedure for the formation of this special institution of judges. Thus, under the Constitution, members of this special institution of judges, at least an absolute majority of them, must be democratically elected by judges (representatives thereof) themselves; the procedure for an election must be such that it must be organised and executed in such a manner that would create no preconditions for doubting the democratic nature of this election, *inter alia*, the fact whether during an election of the said special institution of judges some judges were treated unequally with respect to others, etc.

It also needs to be noted that such a legal regulation that some judges (comparatively small part of the members thereof), namely the Presidents of the Supreme Court of Lithuania, the Court of Appeal of Lithuania, and specialised courts (established under Paragraph 2 of Article 111 of the Constitution) would *ex officio* become members of the said special institution of judges would not be in conflict with the Constitution. Such a legal regulation that members of the said special institution of judges would be judges elected by a rather large social organisation of judges, which unites judges of courts of the Republic of Lithuania, would not be in conflict with the Constitution, either; however, it should be emphasised that such judges must compose only a comparatively small part of members of the said special institution of judges; in this case, the procedure for the election must be such and the election must be organised in such a manner that would create no preconditions for doubting the democratic nature of this election. Such a legal regulation that a comparatively small part of members of this special institution of judges would be appointed by the President of the Republic and/or the Minister of Justice would not be in conflict with the Constitution, either (ruling of 21 December 1999).

In this context, it should be emphasised that the fact that some members of a special institution of judges may be appointed by the President of the Republic and/or the Minister of Justice may in no way be interpreted as meaning that these judges are representatives or proxies of the President of the Republic or of the Minister of Justice in the specified special institution of judges: under the Constitution, it is not allowed to establish such a legal regulation that such judges would, in some way, have to give an account for their activities in a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, to the President of the Republic and/or Minister of Justice so that the President of the Republic and/or the Minister of Justice would give them any assignments, orders, etc. If the Law on Courts established such a legal regulation that the President of the Republic and/or the Minister of Justice appoints some members of a specified special institution of judges, the said judges, when they become members of this special institution of judges not by election, but by the said appointment, must still remain absolutely independent from the President of the Republic and/or the Minister of Justice who appointed them. A different legal regulation, i.e. such where judges who became members of a special institution of judges, as

provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, not by election, but they were appointed by the President of the Republic and/or the Minister of Justice, would be treated as representatives or proxies of these state officials in the specified special institution of judges, would be incompatible, *inter alia*, with the principle of self-governance of the judiciary as one of state powers consolidated in the Constitution, as well as with the constitutional principle of the separation of powers and the constitutional principle of a state under the rule of law.

The powers of a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, where such powers are indicated in this paragraph, imply such a procedure for the formation of this special institution of judges where judges of courts of general jurisdiction of various levels and of specialised courts (at present – administrative courts), established under Paragraph 2 of Article 111 of the Constitution, would be its members. This would be ensured by such a legal regulation that a certain number of positions in the specified special institution of judges would be provided for to every level of courts of general jurisdiction and to every level of specialised courts (at present – administrative courts), established under Paragraph 2 of Article 111 of the Constitution, and that particular members of this special institution of judges (having regard to the number established for that level of courts) would be elected by judges of namely a court (courts) of a particular level.

The fact that a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, has the constitutional powers to advise the President of the Republic, *inter alia*, on the promotion of judges (as well as on the appointment of judges, their transfer, or their release from duties) means that this special institution of judges also has the powers to assess the qualification of judges. It has been mentioned that advice must be given to the President of the Republic only after the professional preparation of certain persons has been assessed. Whether judges of courts of lower level have such qualification and are professionally prepared in such a way that they could be promoted (*inter alia*, could be appointed as judges of courts of higher level) may be best decided by judges (undoubtedly, not exclusively by them) of namely such courts that are the highest instance of appeal and the highest instance of cassation. Thus, such a legal regulation whereby such a number of positions would be established in a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, for judges of every level of courts of general jurisdiction, as well as for judges of specialised courts (at present – administrative courts), established under Paragraph 2 of Article 111 of the Constitution, where judges of the Supreme Court of Lithuania, the Court of Appeal of Lithuania, and those of the highest instances of specialised courts, established under Paragraph 2 of Article 111 of the Constitution (at present, in the system of administrative courts – judges of the Supreme Administrative Court of Lithuania) would comprise the majority of members of this special institution of judges would be constitutionally justifiable.

It has been mentioned that a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, must be composed only of judges. The constitutional status of this special institution of judges implies that certain high requirements may and must be established for its members: only judges who have high qualification, who are sufficiently experienced in their work as a judge, and who earned authority in the professional community of judges may be its members. It has been held in this ruling of the Constitutional Court that the procedure for the election of the said special institution of judges must be such and the election must be organised in such a manner that would create no preconditions for doubting the democratic nature of this election.

The powers of a special institution of judges, which is specified in Paragraph 5 of Article 112 of the Constitution

The Constitutional Court's ruling of 9 May 2006

As such, the fact that only the powers of a special institution of judges, as provided for by law and specified in this paragraph, to advise the President of the Republic on the appointment, promotion, and transfer of judges or their release from duties when he/she applies to it are explicitly consolidated in the

Constitution (Paragraph 5 of Article 112 thereof) does not mean that the said special institution of judges may have only the powers explicitly specified in Paragraph 5 of Article 112 of the Constitution and may not have other powers established for it by the legislature in the Law on Courts.

In this context, it should be noted that the constitutional powers of a special institution of judges, which is specified in Paragraph 5 of Article 112 of the Constitution, are related to the participation in adopting decisions on the career of judges where such decisions are adopted by the judiciary as the branch of state power formed on a professional basis and by certain members of the corps of judges, who implement judicial power and, in accordance with a procedure prescribed by law, are appointed or elected to the said special institution of judges. This also implies the right of the legislature to establish such powers of the said special institution of judges that are not *expressis verbis* established in the Constitution (Paragraph 5 of Article 112 thereof), but arise from the constitutional powers of this special institution of judges, which are related to advising the President of the Republic on the appointment, promotion, and transfer of judges or their release from duties, i.e. the powers related to the participation of the judiciary, as state power formed on a professional basis, in adopting decisions on the career of judges, as well to ensuring the possibilities of persons to pursue the career of a judge. For instance, the Constitution does not prohibit stipulating, by means of a law, that this special institution of judges has the powers to initiate disciplinary actions against judges, the powers to appoint members of the examination commission of judges, etc. (ruling of 21 December 1999).

The judicial self-governance institutions

The Constitutional Court's ruling of 9 May 2006

… it is clear from the official constitutional doctrine of the judiciary formed in previous constitutional justice cases of the Constitutional Court that a special institution of judges, which is specified in Paragraph 5 of Article 112 of the Constitution, is not the only element of the self-governance of the judiciary as an independent state power. Under the Constitution, the legislature, while paying regard to the constitutional principle of the independence of judges and courts and other provisions of the Constitution, also has the powers to establish, by means of a law, other self-governance institutions of the judiciary, to establish the procedure of their formation, powers, etc. Moreover, while seeking to ensure the effectiveness of the self-governance of the judiciary and in view of the fact that, as it has been held in this ruling of the Constitutional Court, under the Constitution, the self-governing judiciary must not be too centralised, certain such other institutions must be formed (first of all, a meeting of judges (or their representatives), provided for by law, must be democratically convened, without which the self-governance of the judiciary as a fully fledged and independent branch of state power is, in general, impossible). While regulating the relationships related to the formation of such institutions, the legislature has broad discretion.

However, it needs to be noted that, if the legislature chose such a model of the self-governance of the judiciary where, along with a democratically convened meeting of judges (or representatives thereof), provided for by law, there would be only one self-governance institution of judges implementing, *inter alia*, the powers established in Paragraph 5 of Article 112 of the Constitution to advise the President of the Republic on the appointment, promotion, and transfer of judges or their release from duties, together with the legal (*inter alia*, procedural) mechanisms prohibiting the excessive centralisation of the self-governing judiciary, this would not in itself mean that the concept of the judiciary as independent and self-governing state power, which is consolidated in the Constitution, would be deviated from.

It should be noted that after the legislature has consolidated various self-governance institutions of the judiciary as an independent state power in the Law on Courts (i.e. after the legislature has chosen such self-governance model of the judiciary under which there are several mentioned institutions), it (particularly taking account of the necessity to ensure public trust in judicial power, law, and the legal system of the state) may also establish, by means of a law, such a legal regulation that the said other self-governance institutions of courts would include not only judges, but also other persons. In itself, this should not be regarded as the denial of the self-governance and independence the judiciary, nor should this be regarded as the denial of the fact that the judiciary is fully fledged. However, in such a case, judges must also form an absolute

majority of members of such self-governance institutions of the judiciary as an independent state power; moreover, the heads (persons holding chairmanship) of such institutions must also be exclusively judges.

… it should be particularly emphasised that, if a law established such a legal regulation that certain self-governance institutions of the judiciary would include not only judges, but also other persons, under the Constitution, such institutions would be unable to exercise the powers specified in Paragraph 5 of Article 112 of the Constitution, i.e. to advise the President of the Republic on the appointment, promotion, and transfer of judges or their release from duties, since Paragraph 2 of Article 5, Paragraph 5 of Article 112 of the Constitution, and the principle of a state under the rule of law would be violated. As it has been mentioned in this ruling of the Constitutional Court, the said powers exclusively belong to a special institution of judges, which is specified in Paragraph 5 of Article 112 of the Constitution, i.e. such an institution that, under the Constitution, is composed only of judges (and that is, first of all, formed for the purpose specified in this paragraph).

The right of a judge released from duties to apply to a court

The Constitutional Court's ruling of 9 May 2006

… a judge who believes that he/she has been released from duties groundlessly and unlawfully has the right, under the Constitution, to apply to a court regarding the defence of his/her violated right. The Constitutional Court has held in its acts more than once that the right of a person who believes that his/her rights or freedoms are violated to apply to a court is an absolute one, that this right may not be artificially restricted or its implementation may not be unreasonably impeded, that it is not permitted to deny this right, as well as that, under the Constitution, the legislature has the duty to establish such a legal regulation whereby all disputes regarding any violation of the rights or freedoms of persons may be decided in a court.

The legal regulation governing the formation of the corps of judges and their professional careers

The Constitutional Court's ruling of 9 May 2006

Under the Constitution, the legislature has the powers (while paying regard to the norms and principles of the Constitution) to establish selection criteria for persons who wish to become judges, as well as to establish how the corps of candidates for the position of a judge is formed, the corps of candidates for the positions of judges of courts of higher level is formed, etc. The legal regulation establishing this may be differentiated, *inter alia*, according to the level of a court in which a person seeks to become a judge. The Constitution also does not prohibit establishing such a procedure for forming the corps of persons aspiring to become judges where persons who have university higher education in law and aspire to become judges must pass a special examination or examinations in which it is assessed whether a person has sufficient professional knowledge in order to hold the office of a judge. …

It should also be emphasised that, even though the dominant principle of the formation of the corps of judges of courts of higher level is the principle of the professional career of judges (where judges are promoted after they are released from previous duties and appointed as judges of courts of higher level), under the Constitution, it is not permitted to establish any such a legal regulation whereby exclusively judges would be able to become judges of courts of higher level. The establishment of such a legal regulation and treating the principle of the professional career of judges unreservedly would create the preconditions for the system of courts to become too closed, to become subjected to a routine, etc.

The powers of the presidents of courts

The Constitutional Court's ruling of 9 May 2006

… under the Constitution, the presidents of all levels of courts of general jurisdiction, as well as of specialised courts (at present – administrative courts), established under Paragraph 2 of Article 111 of the Constitution, have no other powers except those that are assigned to them as judges of a particular court, who must administer justice – decide cases, as well as the powers arising from the Constitution and laws to organise the activity of a particular court, which are assigned to them as the heads of institutions – particular

courts. *Inter alia*, such powers of the presidents of courts of higher level as the initiation of disciplinary cases (other cases of a similar nature) against judges and the presidents of the respective courts of lower level arise from the institutional system of courts, which is consolidated in the Constitution, as well as from the hierarchy thereof. However, in relationships with other state institutions or other state officials, the Constitution does not give rise to any such powers of the president of any court of general jurisdiction, without excluding the Supreme Court or specialised courts (at present – administrative courts), established under Paragraph 2 of Article 111 of the Constitution, that would determine decisions adopted by other state institutions or officials thereof or on which the said decisions would essentially depend.

Extending the powers of judges

The Constitutional Court's ruling of 9 May 2006

… the Constitution does not in essence prevent such a legal regulation established by means of a law where a judge, despite the fact that his/her term of powers expires or he/she reaches the pensionable age established by law, may still hold his/her office for a certain period of time until the consideration of certain cases is finished (until final decisions therein are adopted) where the consideration of the said cases is not finished at the time (on the day) when the term of powers of that judge expires or when he/she reaches the pensionable age established by law. Such an exceptional legal regulation would be constitutionally justifiable, since, otherwise, i.e. without establishing such a legal regulation, the decision of particular cases – the administration of justice – would slow down; thus, the preconditions would be created for injuring the rights and legitimate interests of persons and certain constitutional values would be violated. However, it should be emphasised that, in every case on such extension of the powers of a judge, which is allowed only in exceptional cases, a certain legal act – a decree of the President of the Republic or (if the powers of a justice of the Supreme Court are extended) a resolution of the Seimas – must be passed. In every such a case, advice given by a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, on the extension of powers is necessary (and if the powers of a judge of the Court of Appeal are extended, the assent of the Seimas is also necessary); such advice given by the said special institution of judges to extend the powers of a judge also means its advice to release the judge from duties as soon as the respective legal fact happens – the consideration of particular cases is finished; thus, the advice of the said special institution of judges to extend the powers of a judge also means that the powers of a judge must be discontinued in accordance with the established procedure when the respective legal fact related to the extension of the powers of a judge happens – the consideration of particular cases is finished. … when this legal fact related to the extension of the powers of a judge happens, the President of the Republic need not once again apply to a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, on the release of the said judge from duties when his/her powers expire or when he/she reaches the pensionable age established under the law (since the respective advice has already been received).

Regard must also be paid to the fact that the said constitutionally reasoned exception to the general constitutional prohibition on extending the powers of a judge when they expire or when a judge reaches the pensionable age may not be interpreted as, purportedly, meaning that the powers of the presidents of courts or the chairpersons of divisions of courts may be extended on any similar basis.

[…]

Such a legal regulation where the possibility of extending the term of powers of judges upon their expiry (irrespective of the term for which the powers of the judge are extended and of the level of a court the powers of a judge of which are extended) is provided may create the preconditions for other persons to try to influence a judge directly or indirectly in order that he/she, when seeking the extension of his/her powers, would make certain decisions in cases considered by him/her; such a legal regulation should be regarded as enabling someone to induce a judge to consider cases and adopt decisions in them not only by obeying the law, as required by the Constitution (Paragraph 3 of Article 109), but also by bearing in mind the fact how

decisions adopted in cases considered by him/her will influence the possibility of extending his/her powers in the future. In other words, such a legal regulation would create the preconditions for a judge for adopting such decisions in cases considered by him/her that would correspond not to his/her concept of justice, but would correspond to the concept of justice as understood by other persons.

Thus, such a legal regulation that provides for the possibility of extending the powers of judges upon their expiry, save the exceptions allowed by the Constitution itself, is incompatible with the principle of the independence of judges and courts, which is consolidated in the Constitution, with Paragraph 2 of Article 109 of the Constitution, whereby, when administering justice, judges and courts are independent, with Paragraph 3 of this article, which prescribes that, while considering cases, judges obey only the law, and with the constitutional principle of a state under the rule of law.

The prohibition on extending the powers of the presidents of courts (chairpersons of divisions of courts and other judges fulfilling administrative duties)

The Constitutional Court's ruling of 9 May 2006

The concept of the professional career of judges also includes such cases where a judge is appointed as the president of a certain court, as the chairperson of a division of a certain court, etc. If judges are appointed as the said presidents of courts, chairpersons of divisions of courts, or as ones that must fulfil certain other administrative duties for a certain time period established by law, after the said time period is over, they must be released from their duties; therefore, as well as when appointing them to that office, the respective individual law-applying act on their release from duties must be adopted. The powers of the presidents of courts, the chairpersons of divisions of courts, and other judges who fulfil administrative duties in courts may not be extended by means of a law or by any other legal act establishing general norms – in general, such powers may not be extended as, after the term of powers expires, such powers cease (i.e. an individual law-applying act must be adopted concerning this issue), and then, in accordance with a procedure prescribed by law, it must be decided anew whether the same judge (if laws provide for such a possibility) or another person must be appointed as the president of a court, the chairperson of a division of a court, etc.

The constitutional status of judges

The Constitutional Court's ruling of 22 October 2007

The function of the administration of justice determines an exceptional constitutional status of judges, which is revealed in various constitutional provisions that consolidate the independence of judges and courts when administering justice (Paragraph 2 of Article 109 of the Constitution), the impossibility for a judge to hold any other elective or appointive office, to work in any business, commercial, or other private establishments or enterprises, to receive any remuneration other than the remuneration established for judges and payment for educational or creative activities, and to take part in the activities of political parties and other political organisations (Article 113 of the Constitution), the prohibition on interfering with the activity of a judge and the inviolability of the person of a judge (Article 114 of the Constitution), etc. Under Article 104 of the Constitution, the limitations established on work and political activities for the judges of courts also apply to the justices of the Constitutional Court (Paragraph 3); the justices of the Constitutional Court have the same rights concerning the inviolability of their person as the members of the Seimas (Paragraph 4).

The grounds for releasing judges from duties (cessation of powers) and the influence of such grounds on establishing and applying the social guarantees of judges after their powers cease (Articles 108 and 115 of the Constitution)

See 9.1.3. The independence of judges and courts and the guarantees of their independence, the ruling of 22 October 2007.

Requirements for the professional qualification (education) of judges (applicants for the positions of judges) (on requirements for the professional qualification of lawyers, see 2. The constitutional status of persons, 2.4. Economic, social, and cultural rights, 2.4.1. Economic rights, 2.4.1.2. The right to work, 2.4.1.2.2. Professional competence requirements; as regards the official constitutional doctrine related to higher education in law, see 2.4.3. Cultural rights, 2.4.3.1. The right to education, 2.4.3.1.2. The right to seek higher education)

The Constitutional Court's ruling of 20 February 2008

… Since, in a state under the rule of law, when deciding cases (settling disputes) in which parties to a case are, as a rule (and, in complex cases, virtually always), represented by professional lawyers, the last word always belongs to the court, it is no coincidence that in countries of mature legal culture it is recognised that the activity of judges draws guidelines to the entire legal profession and the legal practice in that country. Therefore, there must be no doubts as to the fact that, in a state under the rule of law (and the Constitution of the Republic of Lithuania consolidates *expressis verbis* the striving for a state under the rule of law), the highest possible professional qualification requirements, as well as those of legal education, may and must be imposed on persons who seek to become judges (even if such highest professional qualification requirements are not imposed on other representatives of the legal profession); the failure to impose such highest professional qualification requirements on applicants for positions of judges would result in the preconditions for the loss of effectiveness in the work of courts and for the deterioration of the quality of such work, as well as for a violation of rights, freedoms, and legitimate interests of persons and various values, which are consolidated, defended, and protected by the Constitution; in general, the said failure would result in the preconditions for situations where justice only formally administered by courts whose judges are persons without necessary qualification would not be the justice that is consolidated in and protected and defended by the Constitution. Consequently, under the Constitution, the legislature has the powers to consolidate also such a requirement in laws whereby applicants for positions of judges are required to have acquired university higher education in law, which is related, in the western legal tradition, with the acquisition of the highest professional qualification of a lawyer.

[…]

… "higher education in law" is a constitutional notion; it is used in Paragraph 3 of Article 103 of the Constitution, in which the requirements for candidates for the post of the justices of the Constitutional Court are described. The Constitution does not contain any explicit provisions defining requirements for judges of the courts specified in Paragraphs 1 and 2 of Article 111 of the Constitution (save the provision of Paragraph 1 of Article 112 of the Constitution, whereby, in Lithuania, only citizens of the Republic of Lithuania may be judges). If such a legal regulation established in the Constitution is interpreted in the context of other provisions of the Constitution, *inter alia*, the constitutional principles of a state under the rule of law, justice, the independence of judges and courts, and the constitutional right of a person to apply to a court, it should be held that the requirement of higher education in law for judges, thus, also for applicants for positions of judges, stems from the Constitution; the said requirement applies to all said applicants, no matter the judges of which court these persons would aspire to become.

The requirement of higher education in law for applicants for positions of judges and the fact that laws may impose the requirement of namely university higher education in law on such persons stem from the provisions of the official constitutional doctrine of the judiciary as the only state power that is formed on a professional basis and is exclusively entrusted with the administration of justice; various aspects of this doctrine are broadly revealed in the Constitutional Court's rulings of 6 December 1995, 19 December 1996, 5 February 1999, 21 December 1999, and 12 July 2001, the conclusion of 31 March 2004, the rulings of 16 January 2006, 28 March 2006, 9 May 2006, and 6 June 2006, the decision of 8 August 2006, the rulings of 27 November 2006 and 22 October 2007, as well as in other acts of the Constitutional Court.

[…]

… under the Constitution, it is impermissible to establish any such a legal regulation whereby lower professional requirements would be raised for persons who wish to hold the position of a judge, *inter alia*,

they would be required lower education and/or lower qualification than persons who intend to engage in other legal professions (advocate, prosecutor, notary, bailiff). Otherwise, this would lead to the preconditions for denying not only the exceptional constitutional status of judges, but also the constitutional concept of the administration of justice.

[…]

Taking account of the importance of the profession of a judge in a state under the rule of law (*inter alia*, taking account of the fact that, as mentioned before, when cases are decided (disputes are settled) in which parties to a case are, as a rule (and, in complex cases, virtually always), represented by professional lawyers, the last word always belongs to the court, and that the activity of judges draws guidelines to the entire legal profession and the legal practice in that country), it should be held that it is not enough that a person who wishes to hold the position of a judge completes only the basic studies provided for in legal acts of the Republic of Lithuania, i.e. the first-cycle studies in the field of law designated for the provision of only the theoretical grounds of the profession and the formation of necessary professional skills; the requirement (which arises from the Constitution) for high professional qualification of a judge implies that persons who wish to become judges are required to have acquired such university higher education in law that can only be ensured by two-cycle university sequential studies in the field of law (i.e. the qualification degrees of bachelor of law and master of law) or integrated studies in the field of law (both of which are provided for in legal acts of the Republic of Lithuania) where university first- and second-cycle studies are related by sequence.

On the other hand, although, as such, the first-cycle (undergraduate) studies in law cannot ensure the level of education sufficient for the work of a judge, these studies are necessary and may not be eliminated from fully fledged university higher education in law necessary for persons who wish to become judges, since, as it has been mentioned before, namely the first-cycle studies in law are intended to provide the basis for the profession and to form professional skills necessary for independent work. A different interpretation, specifically that the first-cycle studies in law may be eliminated from fully fledged university higher education in law necessary for persons who wish to become judges, would not only deny the constitutional concept of the profession of a judge, but also the concept of master studies in the field of law and of the qualification degree of master of law, which is consolidated in legal acts (first of all, laws) of the Republic of Lithuania, since … master studies and the qualification degree of master is related to the acquisition of higher professional qualification and preparation for independent research or artistic activities or activities for which deeper scientific knowledge and greater capacity are required, and only such a student of law can pursue "higher professional qualification" who has the theoretical bases of the legal profession and professional skills necessary for independent work, and that only such a student of law can pursue "deeper scientific knowledge and greater capacity" who has basic scientific knowledge and capacity necessary in the respective area of law. A different interpretation would deny the meaning of the first-cycle (undergraduate) studies in the field of law and that of single-cycle studies in the field of law; this would mean that persons with unequal legal education are allowed to compete for the position of a judge.

… the requirement that persons who wish to become judges have fully fledged university higher education in law (that they are subject to the requirement to have finished single-cycle (integrated) studies in the field of law where university first-cycle and second-cycle studies are related by sequence, or to have the qualification degrees of bachelor of law and master of law) applies to all persons who wish to hold the position of a judge, as well as to those who have completed the third cycle of studies in the field of law, doctoral studies, which are provided for in legal acts of the Republic of Lithuania, and have acquired the scientific degree of doctor.

It has been held in this ruling of the Constitutional Court that, taking account of the principles of legal certainty and legal security, which are consolidated in the Constitution, the fact that a person has completed university studies in the field of law leads to the presumption that such a person is eligible for a position for which university higher education in law is necessary (if he/she meets all the conditions that need not be limited only to the requirement of university higher education in law, but may also include the requirements

for a certain work period as a lawyer, the practice performed, etc.); the same can be said as regards, *inter alia*, persons who wish to apply for the position of a judge. It should also be held that the programmes of university studies in the field of law of schools of higher education must be such that the theoretical preparation and practical abilities (acquired during the time of the studies) of persons who have completed these studies would raise no doubts, while the professional qualification acquired by them would allow them to aspire to positions (professions) in order to hold which (in order to engage in which) university higher education in law is needed.

Consequently, it is impermissible to establish any additional verification with regard to persons who wish to become judges and who have acquired fully fledged university higher education in law in order to ascertain whether such persons have really completed all requirements raised before fully fledged university higher education in law. Their diplomas of higher education testifying either single-cycle university education or the qualification degrees of bachelor of law and master of law should be regarded as sufficient proof that these persons have university higher education in law that is necessary in order to hold the position of a judge.

This does not deny the possibility for the legislature to establish the verification of the knowledge and abilities of applicants for the position of a judge (*inter alia*, by examining such applicants) where the said knowledge and abilities are necessary for the work of a judge.

Extending the powers of judges

The Constitutional Court's decision of 30 June 2010

Such a legal regulation that provides for the possibility of extending the powers of judges upon their expiry, save the exceptions allowed by the Constitution itself, is incompatible with the principle of the independence of judges and courts, which is consolidated in the Constitution, with Paragraph 2 of Article 109 of the Constitution, whereby, when administering justice, judges and courts are independent, with Paragraph 3 of this article, which prescribes that, while considering cases, judges obey only the law, and with the constitutional principle of a state under the rule of law (ruling of 9 May 2006).

The official constitutional doctrine related to the extension of the powers of judges was developed in the Constitutional Court's ruling of 22 October 2007, wherein the following is held: as long as the consideration of such cases where the extension of the powers of a judge is related to completing such consideration is not finished, the said judge is a fully fledged judge; while administering justice (deciding cases), he/she has the same powers as other judges of the same court, his/her status as a judge is indivisible, the same restrictions on activity and limitations on remuneration, which stem from the Constitution, are applied to him/her, he/she has the same responsibility and immunities as other judges; thus, he/she must have the same workload (*inter alia*, because of the fact that, in the said court, the position of a judge who must carry out an important constitutional function – to administer justice – is not yet vacant) as other judges of the same court, and he/she must be paid the same remuneration as other judges of the same court, he/she also has the same social (material) guarantees that the judges of the same court have.

[…]

… under the official constitutional doctrine formulated, *inter alia*, in the Constitutional Court's rulings of 9 May 2006 and 22 October 2007, the Constitution only allows the establishment, by means of a law, of an exceptional legal regulation governing the extension of the powers of judges. In this context, it needs to be noted that, as mentioned before, when being appointed, a judge must know the term of his/her powers (either until the time established under the law or until he/she reaches the pensionable age established under the law). Therefore, the work of a judge (*inter alia*, the assignment of cases for his/her consideration) must be organised in such a manner that, on the day of the expiry of the powers of a judge, he/she would have the possibility of having finished the consideration of cases assigned to him/her.

… the extension of the powers of judges is allowed only in exceptional cases, i.e. when, upon the expiry of the term of powers of a judge or upon reaching the pensionable age established by law, deciding certain cases – the administration of justice – would slow down and, thus, this may create the preconditions for

injuring the rights and legitimate interests of persons and violating certain constitutional values if the powers of such a judge were not extended. For example, deciding cases would slow down if the powers of a judge were not extended, *inter alia*, in cases where, on the day of the expiry of powers, a judge is finishing the consideration of complicated cases wherein most procedural actions have been completed and some time is required for the completion of certain final actions, *inter alia*, adopting a final decision (drawing up and pronouncement thereof).

[…]

… a judge whose powers have been extended must, for a certain period of time (as long as the term of the extension of his/her powers has not expired), still receive the same workload as other judges of the same court, i.e. such a judge may also consider (as long as the term of the extension of his/her powers has not expired) such cases the consideration of which is started after his/her powers have been extended upon the expiry of the term of his/her powers or upon reaching the pensionable age established by law.

In view of the foregoing arguments, the conclusion should be drawn that … a judge whose powers have been extended must receive the same workload as other judges of the same court and, during the period of the extension of powers, he/she may also administer justice as a fully fledged judge (*inter alia*, act as a judge, a judge rapporteur, and a member of a panel) in other cases that are assigned to him/her after his/her powers are extended.

[…]

… a judge must be released from duties when the legal fact to which the extension of his/her powers is related happens, i.e. when he/she finishes the consideration of cases the consideration of which was not finished at the time (on the day) when the term of powers of that judge expired or when he/she reached the pensionable age established by law, where the powers of such a judge were extended for the purpose of completing the consideration of such cases. The powers of a judge must be discontinued in accordance with the established procedure as soon as the aforementioned legal fact happens – the consideration of cases to the consideration of which the term of the extension of the powers of a judge is related is finished. Consequently, such a judge must be released from duties and he/she may no longer consider any other cases (*inter alia*, including such cases that were assigned to him/her as a fully fledged judge during the period of the extension of his/her powers and the consideration of which is not finished on the day when the consideration of the cases to the consideration of which the term of the extension of his/her powers is related is finished).

In view of the foregoing arguments, the conclusion should be drawn that … a judge whose powers have been extended may also administer justice as a fully fledged judge (*inter alia*, act as a judge, a judge rapporteur, and a member of a panel) in other cases (which are assigned to him/her after his/her powers are extended) but only until completing the consideration of certain cases the consideration of which was not finished at the time (on the day) when the powers of that judge were extended.

Professional and ethical requirements imposed on judges

The Constitutional Court's decision of 10 March 2014

The qualification of judges is one of the guarantees that judges will administer justice in a proper manner: only persons with high legal qualification and experience of life may be appointed as judges; this means that judges must meet special professional requirements (ruling of 21 December 1999 and the decision of 3 July 2013). The appropriate preparation of judges, the improvement of their knowledge and in-service training are an important precondition for guaranteeing the proper activities of courts (ruling of 21 December 1999).

Judges must meet very strict ethical and moral requirements; their reputation must be impeccable (ruling of 27 November 2006 and the decision of 3 July 2013); they must protect the honour and prestige of their profession (ruling of 21 December 1999). The Constitutional Court has also held that judges must bear great

responsibility for how they administer justice, i.e. perform the obligation established for them in the Constitution (ruling of 21 December 1999 and the decision of 3 July 2013).

The assessment of the qualification and work of judges; the disciplinary responsibility of judges; releasing judges from duties when their conduct discredits the name of judges (Item 5 of Article 115 of the Constitution)

The Constitutional Court's decision of 10 March 2014

… a special institution of judges, which is specified in Paragraph 5 of Article 112 of the Constitution and takes part in the adoption of decisions on the career of judges (which advises the President of the Republic on the appointment, promotion, and transfer of judges or their release from office) and, as noted in the Constitutional Court's ruling of 9 May 2006, as a result of this, has the powers to assess the qualification of judges, must also assess, in certain aspects, the work of judges done in the consideration of cases – this is an important precondition for guaranteeing the proper activity of courts. However, it needs to be emphasised that the assessment of the work of judges done in the consideration of cases, where such assessment could create the preconditions for undermining the independence of judges and courts, would be incompatible with the Constitution, *inter alia*, Paragraph 2 of Article 109 thereof. The work of judges should be assessed in accordance with pre-established criteria while taking account, *inter alia*, of the circumstances such as the amount of work done in a court in question, the workload of a judge, the complexity and particularity of cases, and the duration and course of court proceedings.

In addition, it needs to be noted that, in view of the fact that, under the Constitution, the self-governing judiciary may not be too centralised and that the legislature has the broad discretion to establish, by means of a law, the system of the self-governance institutions of the judiciary, the powers to assess the work of judges done in the consideration of cases, as well as the qualification of judges, may also be conferred, by means of a law, on a self-governance judicial institution other than that provided for in Paragraph 5 of Article 112 of the Constitution.

… judges must bear great responsibility for how they administer justice, i.e. perform the obligation established for them in the Constitution … the system of the guarantees of the independence of judges and courts does not create any preconditions on the grounds of which a judge could evade the proper fulfilment of his/her duties and investigate cases in a negligent manner. Thus, the constitutional principle of the independence of judges and courts is far from meaning that disciplinary responsibility may not be imposed on a judge who performs his/her duties in an improper manner (*inter alia*, considers cases in a negligent manner) or evades performing them without a justifiable reason.

… the system of self-regulation and self-governance of the judiciary must ensure that judges perform their duties properly and that every unlawful or unethical conduct of a judge be properly assessed. However, as held in the Constitutional Court's ruling of 21 December 1999, the application of disciplinary measures to judges must be organised in such a manner that the actual independence of judges would not be violated.

It should be noted that this means, among other things, that, while applying disciplinary responsibility measures, the balance between the independence and responsibility of judges may not be violated; the said measures may not create any preconditions for interfering with the activities of judges undertaken in the consideration of cases and the adoption of decisions; nor may the said measures violate the actual procedural independence of judges. Disciplinary responsibility measures may be applied to judges for their certain conduct by which they commit misconduct while implementing their powers as a judge (for evading the performance of their duties or for their improper performance, *inter alia*, the negligent consideration of cases), as well as for the conduct of a judge that is not related to the implementation of the powers of a judge. Disciplinary responsibility measures that are applied to judges, the grounds and conditions for their application must be established by means of a law. When deciding whether certain behaviour of a judge is to be recognised as misconduct for which responsibility must be imposed, it is necessary to assess all circumstances related to its commitment.

Under Item 5 of Article 115 of the Constitution, judges are released from their duties according to the procedure established by law when their conduct discredits the name of judges. Thus, under the Constitution, release from duties is the strictest disciplinary responsibility measure applicable to a judge whose conduct discredits the name of judges.

The Constitutional Court has held that the Constitution does not *expressis verbis* establish what types of conduct of a judge are categorised as those discrediting the name of judges; the phrase "conduct discrediting the name of judges" is broad; it includes not only the conduct of a judge by which a judge, while implementing his/her powers as a judge, discredits the name of judges, but also the conduct that discredits the name of judges with no relation to the implementation of the powers of a judge; under the Constitution, the legislature, as well as self-governance judicial institutions, have the discretion to establish what types of conduct of a judge are categorised as those by which the name of judges is discredited; however, neither laws nor decisions of self-governance judicial institutions may establish any thorough (exhaustive) list of types of conduct by which a judge discredits the name of judges; every time the fact whether the conduct of a judge is that by which the name of judges is discredited must be decided after all circumstances related to the said conduct and significant for the case are assessed (rulings of 27 November 2006 and 16 January 2007).

The conduct provided for in Item 5 of Article 115 of the Constitution by which the name of judges is discredited implies not only the establishment (statement) of the relevant facts of objective nature, but also their assessment (ruling of 27 November 2006). Thus, in cases where the President of the Republic applies to a special institution of judges, as provided for by law and specified in Paragraph 5 of Article 112 of the Constitution, so that it would give advice, *inter alia*, on releasing from duties a judge whose conduct has discredited the name of judges, the said institution of judges must not only make sure that a judge has engaged in certain conduct (act), but also assess whether this conduct (act) really discredited the name of judges (rulings of 9 May 2006 and 27 November 2006).

[…]

… the procedural independence and autonomy of judges in deciding all issues related to a case under consideration is a necessary condition for the impartial and fair consideration of the case; only a court itself decides on how it should consider a case; a judge is not bound by the obligation to account for cases considered by him/her to any state institution or officials; while administering justice, no judge is or may be subordinate to any other judge or to the president of any court (*inter alia*, of the court where he/she works, as well as of a court of a higher level or instance); decisions adopted by a judge may be reviewed and altered or rescinded only by a court of higher instance in accordance with the procedure provided for in procedural laws; the purpose of the instance system of courts is to remove any errors of fact (i.e. of the establishment and assessment of legally significant facts) or those of law (i.e. of the application of law) made by courts of lower instance, and not to permit the administration of injustice; justice is administered by always leaving the possibility of correcting any possible error.

Thus, while fulfilling his/her constitutional obligation to administer justice and adopt reasoned and substantiated decisions, a judge considers cases independently and decides all issues related to a case under consideration at his/her own discretion, by following law, relying on a comprehensive and objective assessment of facts, his/her knowledge, inner conviction, and ethical requirements. A judge is not bound by the obligation to account for the consideration of cases and the validity of the adopted decisions; the arguments and reasoning of a judge are set out in the adopted decisions.

… it should be emphasised that the mere fact that a court of higher instance, having reviewed, in accordance with the procedure prescribed in procedural laws, a decision adopted by a court of lower instance, altered it or rescinded it due to errors in the interpretation and/or application of law and breaches of procedural laws that were made while adopting it, may not serve as a basis for imposing disciplinary responsibility on the judge who adopted that decision. Judges of courts of higher instance who consider cases concerning decisions adopted by courts of lower instance also rely on their knowledge and inner conviction; therefore, the adoption of another decision may also be determined by different perception, a different

assessment of facts, and/or a different interpretation of law. The fact that errors in the interpretation and/or application of law and breaches of procedural laws that were made, while adopting a decision, by a judge of a court of lower instance who considered a case in an independent and impartial manner are corrected by a court of higher instance, first of all, shows that the instance system of courts functions according to its intended purpose; however, this does not show that a judge who adopted a decision that has been altered or rescinded performed his/her duties in a negligent manner or lacked necessary professional qualification. When a court of higher instance reviews and alters or rescinds a decision adopted by a court of lower instance, the qualification or activities (work) of a judge (performed in the consideration of cases) who has adopted it is not assessed; (a) self-governance judicial institution(s), which has (have) the respective powers, assesses (assess) this and applies (apply) disciplinary responsibility measures in accordance with the procedure prescribed by means of laws.

Thus, a decision adopted by a judge, even if altered or rescinded by a court of higher instance due to errors in the interpretation and/or application of law and breaches of procedural laws that were made while adopting it, may not serve as a basis for initiating the procedure for disciplinary responsibility, for recognising that the conduct of a judge discredited the name of judges and, under Item 5 of Article 115 of the Constitution, for releasing him/her from duties. The possibility of applying certain measures with negative effects to judges for specific decisions adopted by them (for the assessment of facts and the interpretation of law in those decisions) would deny the essence of the instance system of courts and would create the preconditions for undermining the procedural autonomy of judges in deciding all issues related to a particular case under consideration, as well as for interfering with actions of a judge or a court in administering justice; thus, it would violate the constitutional principle of the independence of judges and courts.

It has been mentioned that the system of self-regulation and self-governance of the judiciary must ensure that judges perform their duties properly and that every unlawful or unethical conduct of a judge be properly assessed; however, the application of disciplinary measures to judges must be organised in such a manner that the actual independence of judges would not be undermined.

… it should be noted that the constitutional principle of the independence of judges and courts does not deny the possibility of imposing disciplinary responsibility on a judge for evading the performance of his/her duties without a justifiable reason and for inappropriate performance of the assigned duties (*inter alia,* for negligence in considering cases). (A) self-governance judicial institution(s), which has (have) the powers to assess the activities of judges (i.e. how a judge, while administering justice, performs his/her duties), to examine misconduct committed by judges, and to impose disciplinary sanctions on them, must, on a case-by-case basis, assess all circumstances related to the performance of the duties of a judge. If a judge, when considering cases, performs his/her duties in a negligent manner (*inter alia,* considers cases in haste and superficially or, on the contrary, unjustifiably slowly, commits evident breaches of the requirements provided for in procedural laws and does not go into the substance of the material of a case, and considers cases in a slipshod manner), disciplinary responsibility should be imposed on him/her for the misconduct committed.

However, it needs to be emphasised that (a) self-governance judicial institution(s), which has (have) the powers to assess the activities of judges and apply disciplinary responsibility measures, may not decide to apply such measures for errors in the interpretation and/or application of law and breaches of procedural laws that are made by a judge while adopting a decision and are detected, as well as corrected, later by a court of higher instance, also where such breaches are detected by means of the review of an adopted decision not by a court of higher instance, but where such breaches are established during the administration of courts or during the assessment of the activities of judges by the aforementioned institution(s). If (a) self-governance judicial institution(s) were given such powers, i.e. the possibility of imposing disciplinary responsibility on judges for a specific adopted decision were provided for, this would mean that this (these) institution(s) is (are) assigned to carry out control over the decisions of judges and assess their content; thus, the essence of the instance system of courts would be denied, the preconditions for interfering with the

activities of a judge in administering justice would be created, and the constitutional principle of the independence of judges and courts would be violated.

… it should also be noted that if decisions of a judge of a court of lower instance are altered or rescinded by courts of higher instance very often, gross and evident errors in the interpretation and/or application of law, as well as gross and evident breaches of procedural laws, are repeatedly made therein, this may mean that, while administering justice, a judge performs his/her duties in an improper manner (*inter alia*, considers cases in a negligent manner, does not go into the substance of the material of a case) and/or that a judge does not meet the requirements of professional qualification established for him/her. The improper and negligent conduct of a judge that reveals evident lack of competence and results in the continual adoption of such decisions in which errors in the interpretation and/or application of law, as well as breaches of procedural laws, are made is incompatible with the requirements established for a judge; therefore, the said conduct serves as a basis for applying disciplinary responsibility measures to a judge, *inter alia*, for recognising that the conduct of a judge discredits the name of judges. It should also be noted that if recurrent gross and evident errors in the interpretation and/or application of law, as well as recurrent gross and evident breaches of procedural laws, are detected not after a court of higher instance reviews the decisions adopted by a judge, but during the administration of courts or during the assessment of the activities of a judge by (a) self-governance judicial institution(s), this also serves as a basis for assessing accordingly the conduct of a judge and applying disciplinary responsibility measures to him/her, *inter alia*, for recognising that a judge discredits the name of judges and, under Paragraph 5 of Article 115 of the Constitution, for releasing him/her from duties.

After all significant circumstances are assessed, every time it must be decided whether the conduct of a judge in making the detected errors and breaches is the one that discredits the name of judges. The constitutional principle of the independence of judges and courts implies that the system of self-regulation and self-governance of the judiciary must function in such a manner that the preconditions would be created for releasing a judge who discredits the name of judges from his/her duties.

In the light of the foregoing, the conclusion should be drawn that the provisions [the guarantees of the independence of judges and courts do not create any preconditions on the grounds of which judges could evade the proper fulfilment of their duties and investigate cases in a negligent manner; judges must protect the honour and prestige of their profession; the system of judicial self-governance must ensure that judges perform their duties properly and that every unlawful or unethical behaviour of a judge is properly assessed] … of the Constitutional Court's ruling of 21 December 1999, *inter alia*, mean that:

– the constitutional principle of the independence of judges and courts does not deny the possibility of imposing disciplinary responsibility on judges for evading the performance of their duties without a justifiable reason and for the inappropriate performance of duties (*inter alia*, for the negligent consideration of cases); however, the mere fact that a court of higher instance, having reviewed, under the procedure provided for in procedural laws, a decision adopted by a judge, altered it or rescinded it due to errors in the interpretation and/or application of law or breaches of procedural laws that were made while adopting it, does not mean that this may serve as a basis for imposing disciplinary responsibility on the judge and, under Item 5 of Article 115 of the Constitution, for releasing him/her from duties upon recognising that his/her conduct has discredited the name of judges;

– recurrent gross and evident errors in the interpretation and/or application of law, as well as recurrent gross and evident breaches of procedural laws that were made by a judge while adopting decisions, serve as a basis for (a) self-governance judicial institution(s), which has (have) the respective powers, to assess the conduct of a judge as the inappropriate performance of duties (*inter alia*, the negligent consideration of cases) and as a lack of necessary professional qualification, to impose disciplinary responsibility on the judge, and to recognise that his/her conduct discredits the name of judges; the system of self-regulation and self-governance of the judiciary must function in such a manner that would create the preconditions for dismissing from duties a judge whose conduct discredits the name of judges.

9.1.5. The powers of courts related to the administration of justice

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 considered by that court (Article 110 of the Constitution)

The Constitutional Court's 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 whether a law or another legal act that must be applied in a concrete 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. 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, that the rights of a person would not be violated, and that a person in respect of whom a legal act inconsistent with the Constitution or a law is applied would not unreasonably acquire, due to this, any rights or a legal status that does not belong to him/her.

The duty of courts to ensure that legal acts that are in conflict with higher-ranking legal acts would not be applied (Article 110 of the Constitution)

The Constitutional Court's ruling of 28 March 2006

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

Paragraph 1 of Article 110 of the Constitution prescribes that judges may not apply any laws that are in conflict with the Constitution; Paragraph 2 of the same article stipulates 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 suspends the consideration of the case and applies to the Constitutional Court, requesting that it decide whether the law or another legal act in question is in compliance with the Constitution. If a court, after it has faced doubts about the compliance of a legal act 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 would be removed, and if the legal act whose compliance with the Constitution is doubtful were applied in the case, such a court would take the risk of adopting a decision that would not be a just one (ruling of 16 January 2006).

It needs to be emphasised that, 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.

On the other hand, as the Constitutional Court held in its decision of 20 September 2005, 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 review of which in terms of their compliance with the Constitution does not fall within the jurisdiction of the Constitutional Court, are in conflict with the Constitution and laws.

When executing this constitutional imperative, under the Constitution, the legislature has the duty to establish, by means of a law, in which courts (of general jurisdiction or specialised ones, established under Paragraph 2 of Article 111 of the Constitution) and under which procedure it is necessary to investigate and decide whether such legal acts (parts thereof) (*inter alia*, legal acts passed by ministers, other substatutory lower-ranking legal acts, as well as legal acts passed by municipal institutions) the review of which in terms

of their compliance with the Constitution is not assigned to the jurisdiction of the Constitutional Court under the Constitution are in conflict with the Constitution and laws.

However, if the legislature has not carried out this constitutional duty for certain reasons (though the Constitution does not tolerate this), still, courts, under Paragraph 1 of Article 110 of the Constitution, may not apply any such legal acts that are in conflict with the Constitution. Thus, in cases of failure to establish, by means of a law, any such a legal regulation under which it would be clearly established, following, *inter alia*, the principle of *expressio unius est exclusion alterius*, in which courts and under which procedure it is necessary to investigate and decide whether the said legal acts (parts thereof) are in conflict with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution, it should be held that: first, under the Constitution (Article 110), any court, as mentioned before, which may not apply a legal act whose compliance with the Constitution (another higher-ranking legal act) it doubts, although it may not apply to the Constitutional Court concerning the compliance of such a legal act with the Constitution, because the review of such a legal act in terms of its compliance with the Constitution (another higher-ranking legal act) is not assigned to the jurisdiction of the Constitutional Court under the Constitution, has the powers arising directly from the Constitution to declare ad hoc a particular legal act in conflict with the Constitution (another higher-ranking legal act) and not to apply it; second, such ad hoc declaration of the legal act in conflict with the Constitution (another higher-ranking legal act) is the constitutional control of *inter partes* model, which is established by the Constitution only under the said exceptional circumstances, i.e. if the legislature, for certain reasons, has not carried out this constitutional duty to establish, by means of a law, in which courts and under which procedure it is necessary to investigate and decide whether such legal acts (parts thereof) the review of which in terms of their compliance with the Constitution is not assigned to the jurisdiction of the Constitutional Court under the Constitution are in conflict with higher-ranking legal acts, *inter alia*, with the Constitution.

[…]

It should be 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).

[…]

… an investigation into whether legal acts (parts thereof) passed by other law-making subjects (thus, which were not passed by the Seimas, the President of the Republic, or the Government or were not 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 conflict 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 of adopting such a decision that would not be a just one, i.e. there would be the risk of applying 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 there would be the risk of not applying 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 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 into the compliance of legal acts (parts thereof) passed by other law-making subjects (thus, which were not passed by the Seimas, the President of the Republic, or the Government or were not adopted by referendum), with higher-ranking legal acts, except the Constitution itself, where such an investigation is assigned to the jurisdiction of administrative courts [by means of laws], implies the initiation of the respective constitutional justice case at the Constitutional Court, 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 compliance of a 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.

[…]

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 to 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 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.

This is also *mutatis mutandis* applicable to those legal situations where a party to a case considered by a court has doubts over the compliance of a legal act (part thereof) with the Constitution (with another higher-ranking legal act) where such a 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) does not fall under the jurisdiction of the Constitutional Court (i.e. the said act has not been passed by the Seimas, by the President of the Republic, or by the Government and it has not been adopted by referendum) – the said party, under the Constitution … has the right to apply to the respective administrative court regarding the compliance of such a legal act (part thereof) with the Constitution (with another higher-ranking legal act).

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 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 considered 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 considered 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 with the Statute of the Seimas, but only the one that must be applied in the respective case considered by that court, also whether not any act (part thereof) 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 considered 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 considered by that court.

Such a requirement is also applicable to the court decisions to apply to the respective administrative court with a petition requesting an investigation into and a decision on whether a legal act (part thereof) that is applicable in a case and whose verification in terms of its compliance with higher-ranking legal acts (*inter alia* (and, first of all), with the Constitution) is assigned to the jurisdiction of administrative courts is in conflict with the Constitution (another higher-ranking legal act).

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 whose compliance 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 does not doubt 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 once 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 until the Constitutional Court completes the consideration of the respective case following the petition of the said another petitioner.

The powers of courts to fill legal gaps ad hoc

The Constitutional Court's decision of 8 August 2006

The removal of legal gaps (without excluding a legislative omission) is a matter of the competence of the respective (competent) law-making subject. However, it is also possible, to a certain extent, to fill legal gaps that are in lower-ranking legal acts in the course of the application of law (*inter alia*, by making use of legal analogy, by applying general legal principles, as well as higher-ranking legal acts, first of all, the Constitution), thus, also in the course of the interpretation of law (*inter alia*, when this is done by courts of general jurisdiction and specialised courts (established under Paragraph 2 of Article 111 of the Constitution), which administer justice and decide, within their competence, individual cases and must interpret law so that they would be able to apply it). At the same time, it needs to be emphasised that a court can fill a legal gap that is in a lower-ranking legal act only ad hoc, i.e. by this way of the application of law, a legal gap is removed only as regards the particular social relationship due to which a concrete dispute is decided in the respective case investigated by that court. On the other hand, the judicial (ad hoc) removal of legal gaps creates the preconditions for developing the uniform case law in deciding cases of a certain category – the law consolidated in judicial precedents; the law consolidated in judicial precedents can be changed or modified later by the legislature (or another competent law-making subject), when it regulates certain social relationships by means of a law (or another legal act), thus removing a particular legal gap already not ad hoc, but by the prospective legal regulation of a general nature.

Thus, it is possible to completely remove legal gaps (as well as legislative omissions) only when the law-making institutions issue the respective legal acts. Courts cannot do this. They can fill the legal gaps that are in lower-ranking legal acts only ad hoc, since courts administer justice, but they are not legislative institutions (in the positive and broadest sense of this term); such a limitation on the possibilities of courts in this area is especially evident when gaps in substantive law are confronted. However, in all cases there is an undeniable possibility for courts to fill ad hoc a legal gap that is in a lower-ranking legal act. If such powers of courts were denied or not recognised, if the possibilities of courts to apply law, first of all, supreme law – the Constitution – depended on whether a certain law-making subject did not leave gaps in the legal regulation (legal acts) adopted by it, and if courts were able to decide cases only after these legal gaps are filled by way of lawmaking, then it would have to be stated that courts, when they decide cases, apply not law, not, first of all, supreme law – the Constitution – but only a law (in the general sense of this term), that they administer justice not according to law, but only formally apply articles (parts thereof) of legal acts, that constitutional values, *inter alia*, the rights and freedoms of a person, may be injured (and may be neither compensated nor redressed) only because the respective law-making subject has not legally regulated certain relationships (or has legally regulated them, but not intensively enough), i.e. that although certain values are consolidated in the Constitution, they, under the Constitution, are not properly defended and protected. This would not be in line with the social and constitutional mission of courts. Besides, this would mean that law is treated only as its textual form and is identified with its textual form.

[…]

It has been held in this decision of the Constitutional Court 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 concerning 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; otherwise, it would have to be held that the Constitution itself prohibits courts from administering justice, but this would absolutely be unjustifiable from the constitutional standpoint. In the course of the application of law, also in cases where, instead of a legal regulation ruled by the Constitutional Court to be in conflict with a higher-ranking legal act, *inter alia*, 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*, the Constitution, courts must follow *inter alia*, the constitutional concept of human rights and freedoms, the maxim recognising the innate nature of human rights and freedoms consolidated in the Constitution, the constitutional principles of a state under the rule of law, justice, legal certainty and legal security, proportionality, the due process of law, and of the equality of the rights of persons, as well as the constitutional principle of legitimate expectations (which, as held in the Constitutional Court's ruling of 13 December 2004, implies that, in certain exceptional cases, it is also necessary to protect such acquired rights of a person arising from legal acts ruled later in conflict with the Constitution (or in conflict with the Constitution and/or laws where the said legal acts are substatutory) that, if not defended or protected, would result in greater harm to the person, other persons, society, or the state than harm inflicted in cases of the [total] or partial defence or protection of the said rights). If, in cases where, instead of a legal regulation ruled by the Constitutional Court to be in conflict with a higher-ranking legal act, *inter alia*, 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*, the Constitution, courts evaded for certain reasons implementing their constitutional powers to apply, *inter alia*,

the general principles of law, as well as higher-ranking legal acts, first of all, the Constitution – supreme law – and, thus, evaded ensuring human rights and freedoms, it would have to be held that courts do not carry out their constitutional purpose of the administration of justice, that they ignore the constitutional principles of a state under the rule of law and justice, the general legal principle of *ubi ius, ibi remedium*, the provision of Paragraph 1 of Article 6 of the Constitution, whereby the Constitution is an integral and directly applicable act, also that a person might sustain damage and remain unprotected, his/her rights and freedoms, as well as legitimate interests and legitimate expectations, might be non-secured only because a certain law-making subject, i.e. a state institution, has not performed its constitutional duty – where, instead of a legal regulation ruled by the Constitutional Court to be in conflict with a higher-ranking legal act, *inter alia*, 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*, the Constitution. This would not only shatter the trust of that person in the state and law in substance, but also, if such practice became widespread, might create the preconditions for the thriving of such arbitrariness of state power where it does not act in the way it is obliged to act, as well as for legal nihilism and, in the long run, for distrust by an increasingly greater part of society or even entire society in the state and its law.

However, it needs to be emphasised once again that, when courts exercise these constitutional powers, legal gaps are not removed for good – they are only filled ad hoc; still, this allows ensuring 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 the respective case is considered in a court of general jurisdiction or in a specialised court, established under Paragraph 2 of Article 111 of the Constitution. This should also motivate a competent law-making subject to remove, more speedily and in a proper manner, an existing legal gap, i.e. to establish a missing legal regulation instead of the one ruled to be in conflict with the Constitution.

The right of a judge to become familiar with a state secret or other classified information (Articles 109 and 117 of the Constitution) (on the protection of a state secret (other classified information) in court proceedings, see 9.1.6. Court proceedings and court decisions, the ruling of 15 May 2007)

The Constitutional Court's ruling of 15 May 2007

Paragraph 1 of Article 109 of the Constitution, whereby, in the Republic of Lithuania, justice is administered only by courts, gives rise to the duty of courts to consider cases justly and objectively, as well as to adopt reasoned and substantiated decisions; therefore, there may not be any such a legal situation where a court would not be able to have access to such case material that contains information constituting a state secret (or other classified information). In its ruling of 19 December 1996, the Constitutional Court held that "the right of a judge who investigates a case to have access to information that is considered a state secret is based on Article 109 of the Constitution … as well as on Article 117 of the Constitution" and that "the right of a judge to have access to information that is considered a state secret and is necessary for the investigation of a case is determined by the function of a court as a state institution to administer justice, but not by entering the position of a judge on the list of certain positions".

The continuity of the jurisprudence of courts (court precedents)

The Constitutional Court's ruling of 24 October 2007

The constitutional principle of a state under the rule of law implies the continuity of jurisprudence. The instance system of courts of general jurisdiction, which is consolidated in the Constitution, must function in such a way that would create the preconditions for developing the uniform (coherent, consistent) case law of courts of general jurisdiction, i.e. such that would be based on the principles of a state under the rule of law, justice, and the equality of all persons before the law (and other constitutional principles), which are enshrined in the Constitution, as well as on the maxim (inseparably linked with the said principles and arising from them) that the same (analogous) cases must be decided in the same way, i.e. they must be decided not

by creating new court precedents, competing with the existing ones, but by taking account of the already consolidated ones. When ensuring the uniformity (coherence, consistency) (which arises from the Constitution) of the case law of courts of general jurisdiction and, thus, the continuity of jurisprudence, the following factors (along with other important factors) are also of crucial importance: courts of general jurisdiction, when adopting decisions in cases of certain categories, are bound by their own precedents – decisions in analogous cases; courts of general jurisdiction of lower instance, when adopting decisions in cases of certain categories, are bound by decisions of courts of general jurisdiction of higher instance – precedents in cases of the same categories; courts of general jurisdiction of higher instance, while reviewing decisions of courts of general jurisdiction of lower instance, must assess these decisions by always following the same legal criteria; these criteria must be clear and known *ex ante* to subjects of law, *inter alia*, to courts of general jurisdiction of lower instance (thus, the jurisprudence of courts of general jurisdiction must be predictable). The already existing precedents in cases of certain categories that were created by courts of general jurisdiction of higher instance are not only binding on courts of general jurisdiction of lower instance that adopt decisions in analogous cases, but also on courts of general jurisdiction of higher instance that created those precedents (*inter alia*, the Court of Appeal of Lithuania and the Supreme Court of Lithuania). Courts must follow such a concept of the content of particular provisions (norms, principles) of law (including such a concept of the application of such provisions of law) that was formed and was followed when applying these provisions (norms, principles) in previous cases, *inter alia*, when previously deciding analogous cases. Disregarding the maxim that the same (analogous) cases must be decided in the same way, which arises from the Constitution, would also mean disregarding the provisions of the Constitution on the administration of justice, that of the constitutional principles of a state under the rule of law, justice, the equality of people before the court, and other constitutional principles. The case law of courts of general jurisdiction in cases of particular categories must be modified and new court precedents in cases of the same categories may be created only when this is unavoidably and objectively necessary and when this is constitutionally reasoned and justified. Such modification of the case law of courts of general jurisdiction (deviation from previous precedents, which was binding on courts until then and the creation of new precedents) must in all cases be properly (clearly and rationally) argued in the respective decisions of courts of general jurisdiction. Neither creating new court precedents nor arguing (substantiating) court precedents may be such volitional acts that are not rationally and legally motivated. No creation or reasoning of a new court precedent may be determined by accidental (from the aspect of law) factors. It is such modification – only when this is unavoidably and objectively necessary, and when this is properly (clearly and rationally) argued in all cases – of the case law of courts of general jurisdiction (deviation from previous precedents that were binding on courts by then and the creation of new precedents) that must be respectively ensured by the Court of Appeal of Lithuania and the Supreme Court of Lithuania within their competence. If the said requirements arising from the Constitution are disregarded when court decisions are adopted, this would create the preconditions for the incompatibilities and incoherence both in the case law of courts of general jurisdiction and in the legal system, the jurisprudence of courts would become less predictable, and there would be grounds for doubts as to whether particular courts of general jurisdiction are impartial when adopting decisions, and whether such decisions are subjective in other aspects. The instance system of courts of general jurisdiction, which stems from the Constitution, may not be interpreted as restricting the procedural independence of courts of general jurisdiction of lower instance: even though … under the Constitution, when adopting decisions in cases of certain categories, courts of general jurisdiction of lower instance are bound by decisions of courts of general jurisdiction of higher instance – precedents in cases of the said categories, courts of general jurisdiction of higher instance (and their judges) may not interfere in cases considered by courts of general jurisdiction of lower instance or give them any instructions, either obligatory or recommendatory, on how certain cases must be decided, etc.; from the aspect of the Constitution, such instructions (whether obligatory or recommendatory) given by certain courts (judges) would be regarded as acting *ultra vires*. Under the Constitution, case law is formed only when courts decide cases themselves. The imperatives (which stem from the Constitution and are discussed in this ruling of the

Constitutional Court) of both the activity of courts of general jurisdiction and the legal regulation governing such activity are also *mutatis mutandis* applicable to the activity of specialised courts (established under Paragraph 2 of Article 111 of the Constitution) and the legal regulation governing their activity.

[…]

Thus, court precedents are sources of law – *auctoritate rationis*; the reference to the precedents is a condition for uniform (coherent, consistent) case law, as well as that of the implementation of the principle of justice, which is consolidated in the Constitution. Therefore, it is not permitted to unreasonably ignore court precedents. In order to perform this function properly, precedents themselves should be clear. Court precedents may not be in conflict with the official constitutional doctrine.

On the other hand, it is not permitted to overestimate, let alone make absolute, the significance of court precedents as sources of law. Court precedents must be invoked with particular care. It needs to be emphasised that, in the course of the consideration of cases by courts, only those previous decisions of courts have the power of precedent that were created in analogous cases, i.e. a precedent is applied only in those cases whose factual circumstances are identical or very similar to the factual circumstances of a case in which the respective precedent was created and with regard to which the same law should be applied as in the case in which such a precedent was created. In a situation where there is the competition of precedents (i.e. when there are several differing court decisions adopted in analogous cases), it is necessary to follow a precedent that was created by a court of higher instance (higher level). Also, account should be taken of the time of the creation of a precedent and of other significant factors as, for instance: the fact whether a certain precedent reflects the established court practice or whether it is a single occurrence; whether the reasoning of a decision is convincing; the composition of a court that adopted the respective decision (whether such a decision was adopted by a single judge, or by a panel of judges, or whether by the enlarged panel of judges, or whether by a court (its chamber) in its entire composition); whether there were any separate opinions of judges expressed; the possible significant (social, economic, etc.) changes that took place after the adoption of the respective court decision that has the significance of a precedent, etc. As mentioned before, in cases where the modification of case law is unavoidably and objectively necessary, courts may deviate from previous precedents that were binding on courts until then, and create new precedents; however, this must be done by properly (clearly and rationally) arguing it. It needs to be especially emphasised that, when deviating from its previous precedents, a court must not only properly argue an adopted decision (i.e. a created precedent) itself, but it also must clearly set out the reasoning and arguments substantiating the necessity to deviate from a previous precedent.

One of the necessary conditions for ensuring the uniformity (coherence, consistency) of case law and, thus, also the continuity of jurisprudence is the accessibility of precedents of courts of general jurisdiction of all levels and of all specialised courts, established under Paragraph 2 of Article 111 of the Constitution, where the said accessibility is determined by the creation of the respective information systems and ensuring the organisational and technical possibilities for courts (judges) to have access to decisions (precedents) previously adopted by courts in analogous cases.

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 considered by that court (Article 110 of the Constitution); application by a court to the Constitutional Court with a petition requesting the interpretation of a final act passed by the Constitutional Court

The Constitutional Court's decision of 22 April 2010

Paragraph 1 of Article 110 of the Constitution prescribes that judges may not apply any laws that are in conflict with the Constitution; Paragraph 2 of the same article stipulates that, 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 suspends the consideration of the case and applies to the Constitutional Court, requesting that it decide whether the law or another legal act in question is in compliance with the

Constitution. If a court, after it has faced doubts about the compliance of a legal act 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 would be removed, and if the legal act whose compliance with the Constitution is doubtful were applied in the case, such a court would take the risk of adopting such a decision that would not be a just one (rulings of 16 January 2006 and 28 March 2006).

Under the Constitution, the grounds for initiating a constitutional justice case at the Constitutional Court are doubts faced by a court (judge) that is considering a concrete case as to the conformity of a legal act applicable in that case with the Constitution (another higher-ranking legal act): such doubts must be removed so that the said court could adopt a just decision (another final court act) in that case. It is only the Constitutional Court that may remove such doubts (i.e. deny or confirm their reasonableness) within its competence (ruling of 24 October 2007).

In its ruling of 28 March 2006, the Constitutional Court held the following:

– 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 that case, 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;

– 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;

– under the Constitution, a court considering a certain case where such a court, 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 a particular 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.

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 consolidated 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. reveals 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 the fact 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 regarding 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 powers of courts to interpret notions used in legal acts

The Constitutional Court's ruling of 18 April 2012

… the Constitutional Court has held that 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). Thus, when applying laws and other legal acts, courts must interpret notions employed therein in the course of deciding cases under their consideration.

The right of a court (judge) to have access to all case material and/or material significant for a case (*inter alia*, material constituting a state secret or other classified information) (Articles 109 and 117 of the Constitution)

The Constitutional Court's decision of 3 July 2013

… the purpose and constitutional competence of the judiciary is to administer justice; courts have the duty to consider cases in a fair and objective manner, as well as to adopt reasoned and substantiated decisions; the adoption of a just court decision constitutes a constitutional value; every final court act must be based on legal arguments (reasoning); the rights of a person must be defended not in a perfunctory manner, but in reality and effectively; the justice administered by a court in a perfunctory manner is not the justice that is consolidated, protected, and defended by the Constitution.

It needs to be noted that, in order for a court to properly fulfil its constitutional obligation to administer justice, *inter alia*, in reality and effectively, and not to defend the violated rights and freedoms of a person only in a perfunctory manner, under the Constitution, such a legal regulation must be established that could ensure the right of a court (judge) that considers a case to have access to all case material and/or material significant for the case.

Thus, under the Constitution, no such situation is allowed where, in the course of the fulfilment of its constitutional obligation to administer justice and, having the duty to consider a case justly and objectively, a court would be forced to adopt a decision without having any possibility of access to all case material and/or the material significant for the case, *inter alia*, material constituting a state secret or other classified

information, irrespective of the fact whether the court has permission, which is issued under the [law], to work with or have access to classified information. If a court had to adopt a decision without a comprehensive assessment of all case material and/or material significant for the case, *inter alia*, material constituting a state secret or other classified information, the adopted decision could not be substantiated properly and the preconditions would be created for the adoption of an unjust decision. It would mean that, in the name of the Republic of Lithuania, the court implemented not the justice that is consolidated in the Constitution, but, according to the Constitution, no justice at all. In such a way, the constitutional concept of a court as an institution implementing justice in the name of the Republic of Lithuania would also be denied.

[…]

… the duty of the state to guarantee the protection of the secrecy of information constituting a state secret (or other classified information) and the possibility for a court to adopt a just decision may not be opposed.

… certain requirements are imposed on persons who are granted the right to have access to information that constitutes a state secret; such requirements are related to the reliability and loyalty of such persons to the State of Lithuania; the said requirements should be linked with the trust of the state in that person.

In this context, it needs to be noted that, as the Constitutional Court has held on more than one occasion, judges are subject to special professional requirements; a judge must feel greatly responsible for how he/she administers justice – performs the obligation established for him/her in the Constitution; only the persons with high legal qualification and having experience of life may be appointed as judges (ruling of 21 December 1999); judges must meet very strict ethical and moral requirements: their reputation must be impeccable (ruling of 27 November 2006).

Consequently, the fact that a person is appointed as a judge and is entrusted with the administration of justice in the name of the Republic of Lithuania shows the trust of the state in that person; thus, it is presumed that there is no ground for doubting his/her reliability and loyalty to the State of Lithuania.

In view of the foregoing arguments, the conclusion should be drawn that … courts (judges) considering a case have the right in all cases to have access to case material and/or material significant for the case where such material constitutes a state secret (or other classified information), irrespective of whether they have permission, which is issued under [the law], to handle or have access to classified information.

The duty of a court to follow European Union law and apply it properly and, in the event of doubts regarding the interpretation or validity of the provisions of European Union law, to refer to the Court of Justice of the European Union for a preliminary ruling

The Constitutional Court's ruling of 14 December 2018

… the duty of a court, stemming from Paragraph 1 of Article 109 of the Constitution and the constitutional principle of justice, to adopt a fair decision, *inter alia*, implies the duty of a court to follow law and apply it properly when examining a case.

[…]

… under Paragraph 2 of the Constitutional Act of the Republic of Lithuania on Membership of the Republic of Lithuania in the European Union, which is a constituent part of the Constitution, 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. In view of this, it should be noted that the duty, stemming from Paragraph 1 of Article 109 of the Constitution and the constitutional principle of justice, for a court to follow law and apply it properly also includes the duty to follow European Union law and apply it properly.

The full participation of the Republic of Lithuania, as a Member State, in the European Union is a constitutional imperative based on the expression of the sovereign will of the Nation; full membership of the Republic of Lithuania in the European Union is a constitutional value (rulings of 24 January 2014 and 19 November 2015 and the decision of 16 May 2016); the constitutional imperative of full participation by

the Republic of Lithuania in the European Union also implies the constitutional obligation of the Republic of Lithuania to properly implement the requirements of European Union law (decision of 20 December 2017).

Article 1 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union, which is a constituent part of the Constitution, is relevant in this respect: "The Republic of Lithuania as a Member State of the European Union shall share with or confer on the European Union the competences of its state institutions in the areas provided for in the founding Treaties of the European Union and to the extent it would, together with the other Member States of the European Union, jointly meet its membership commitments in those areas, as well as enjoy membership rights."

[…]

… the Constitution, *inter alia*, Paragraph 1 of Article 109 thereof, the constitutional principle of justice, the constitutional imperative of full participation by the Republic of Lithuania in the European Union, as well as Articles 1 and 2 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union, give rise to the duty of a court, in order to properly interpret the provisions of European Union law that are applicable in a case under its consideration, to refer to the Court of Justice of the European Union with a request for a preliminary ruling in the event of doubts regarding the interpretation or validity of the said provisions of European Union law.

The duty of a court to fairly resolve the issue of the distribution of costs between the parties

The Constitutional Court's ruling of 14 December 2018

… the duty of a court, stemming from Paragraph 1 of Article 109 of the Constitution and the constitutional principle of justice, to adopt a fair decision implies, *inter alia*, the duty to fairly resolve the issue of the distribution of costs between the parties.

It should be noted in this context that the prohibition, arising from Paragraph 1 of Article 109 of the Constitution and the constitutional principles of justice and a state under the rule of law, for the legislature to establish such a legal regulation that would deny the powers of a court to administer justice, *inter alia*, means that the legislature must not establish such a legal regulation that would preclude a court from resolving the issue of the distribution of costs between the parties in a fair manner by taking into account all circumstances of the case.

It should also be noted that the fair distribution of costs between the parties depends on the good faith of the parties, the reasonableness and necessity of the costs incurred by them, the extent to which their claims have been satisfied after the court has settled the case, and other significant circumstances, *inter alia*, where the cause of certain incurred costs is the fact that the court, in order to adopt a fair, reasoned, and well-grounded decision in the case, has fulfilled its constitutional duty to apply to the Constitutional Court or another court having jurisdiction over the compliance of the legal act applicable in the case with higher-ranking legislation, or its constitutional duty to refer to the Court of Justice of the European Union for a preliminary ruling. When deciding on the fair distribution of costs incurred by the parties due to the fact that the court has fulfilled the said constitutional duty, the court may take into account the fact that its application to the Constitutional Court or another court having jurisdiction over the compliance of the legal act applicable in the case under consideration with higher-ranking legislation, or its reference to the Court of Justice of the European Union, is aimed not only to examine the particular case in a fair manner, but also to ensure the supremacy of the Constitution and the constitutional imperative of the rule of law in the legal system, as well as the constitutional obligation of the Republic of Lithuania to properly implement the requirements of European Union law. In view of the importance for the legal system of such an application by a court to the Constitutional Court or another court having jurisdiction over the compliance of the legal act applicable in the case under consideration with higher-ranking legislation, or in view of the importance for the legal system of such a reference by a court to the Court of Justice of the European Union, the legislature may provide that the necessary and reasonable costs (or part thereof) incurred by the parties as a result of such an application or reference by the court are compensated from the state budget.

The investigation of the factual circumstances on which an individual substatutory legal act is based falls within the competence of a court applying to the Constitutional Court for the assessment of the constitutionality of the said legal act

The Constitutional Court's decision of 23 January 2019

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

9.1.6. Court proceedings and court decisions

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

The Constitutional Court's ruling of 16 January 2006

… The administration of justice is a function of courts and it determines both the place of the judiciary in the system of institutions of state power and the status of judges. Neither any other state institution nor any other state official may exercise this function (rulings of 21 December 1999 and 13 May 2004).

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

Under Paragraph 1 of Article 111 of the Constitution, the courts of the Republic of Lithuania are the Supreme Court of Lithuania, the Court of Appeal of Lithuania, regional courts, and district courts. These courts constitute the system of courts of general jurisdiction. Paragraph 2 of Article 111 of the Constitution provides that, for the consideration of administrative, labour, family, and cases of other categories, specialised courts may be established. Thus, the instance system of courts is established in the Constitution, *inter alia*, in the said provisions of Paragraphs 1 and 2 of Article 111 of the Constitution. The purpose of the instance system of courts is to remove the possible mistakes of courts of lower instances, to prevent any execution of injustice, and, thus, to protect the rights and legitimate interests of a person, society, and the state.

The legislature must, by means of a law, establish such powers (jurisdiction) of all courts of general jurisdiction of all instances and of all specialised courts, established under Paragraph 2 of Article 111 of the Constitution, that would be constitutionally justifiable. In this context, it needs to be noted that the constitutional concept of the administration of justice also implies that courts must decide cases only by strictly adhering to the procedural and other requirements established in laws, without overstepping the limits of their jurisdiction, and not exceeding their other powers.

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

to the consideration of a criminal case in a court. While considering a criminal case, a court must act in such a way that the objective truth is established in a criminal case and the question of the guilt of a person accused of having committed a criminal act is fairly resolved. A court must also be equally just to all persons who participate in criminal proceedings.

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

In this context, it needs to be noted that the principle of the separation of powers, which is consolidated in the Constitution, determines the relationships of a court with other state institutions or officials and the nature of its actions in criminal proceedings. Courts are the only state institution that administers justice. Justice is administered by a court following a certain procedural order, which is regulated by law. It also needs to be mentioned that the constitutional function of a court – the administration of justice – is essentially different from being in charge of the pretrial investigation of a case, control over this investigation, upholding charges on behalf of the state, etc. When administering justice, a court considers a case that is already prepared, solves the issue of the guilt of a defendant and either imposes punishment on him/her or acquits him/her (rulings of 5 February 1999 and 8 May 2000).

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

See 3. Legal responsibility, 3.2. Criminal proceedings, the ruling of 16 January 2006.

The limits of the consideration of criminal cases at the court of appeal instance; the possibility for a court to overstep the limits of an appeal in the course of defending the public interest

The Constitutional Court's ruling of 21 September 2006

… as such, the principle of *tantum devolutum quantum appellatum* does not imply that the court of appeal instance must be restricted by the limits of an appeal when its decision could be essentially unjust and when this could violate constitutional values.

[…]

… as such, the general rule that the court of appeal instance may not overstep the limits defined in an appeal (which expresses the principle of *tantum devolutum quantum appellatum*) may not be regarded as groundless or unjust, as it ensures not only the speed of civil proceedings, but also the fact that there will be no intervention by the court in such areas of life where there is no dispute among private persons or such a dispute has already been solved in the court of first instance and the decision was not appealed in accordance with the procedure prescribed by law. There are no arguments that would allow stating that this general rule could in any aspect be in conflict with any provision of the Constitution, *inter alia*, with Paragraph 1 of Article 29 or Article 109 of the Constitution. Quite to the contrary, this rule helps to ensure the autonomy of an individual, in particular, of a private person when a court administers justice, as well as the fact that the legitimate expectations and interests of a person will not be denied.

[…]

However … under the Constitution, the establishment of any such a legal regulation to the effect that a court, having received an application, would not be able to defended the public interest or where a court, while deciding a case, would be forced to adopt a decision that would itself violate the public interest and, thus, also a certain value (*inter alia*, a person's right or freedom) consolidated, defended, and protected by the Constitution, is not allowed. If a court adopted such a decision, that decision would be unjust. This would

mean that, in the name of the Republic of Lithuania, such a court would administer not the justice that is consolidated in the Constitution, but, under the Constitution, no justice at all. In such a way, the constitutional concept of a court as an institution implementing justice in the name of the Republic of Lithuania would also be denied.

… it is not allowed to establish, by means of a law, any final list of cases where a court (also a court of appeal instance) is permitted to defend the public interest (*inter alia*, by overstepping the limits of an appeal) or any final list of cases where a court is not permitted to defend the public interest (*inter alia*, by overstepping the limits of an appeal).

On the other hand, it should be emphasised that the possibility for a court of appeal instance, which stems from the Constitution, to overstep the limits of an appeal while defending the public interest may not be interpreted as its purely discretionary right: such a court may overstep the said limits only when there is a constitutional basis for this, i.e. when, without overstepping them, a certain value consolidated, defended, and protected by the Constitution would be violated and, thus, a decision adopted by the court of appeal instance in the respective case would be unjust. In all cases, such a court must provide reasons for that.

Requirements for a legal regulation governing civil proceedings

The Constitutional Court's ruling of 21 September 2006

… in general, no prohibition arises from the Constitution to establish such a legal regulation governing civil proceedings whereby, in cases where a party to proceedings withdraws from the participation in the consideration of a civil case of its own will and refuses to cooperate in the consideration of the case, a court would have the powers to consider such a civil case and adopt a decision also where a party to the proceedings has withdrawn of its own will and does not cooperate with the court. Quite to the contrary, civil proceedings must be regulated by means of a law in such a manner that no preconditions would be created for delaying the consideration of cases, the adoption and execution of decisions, thus, participants to civil proceedings (including parties to proceedings) would be prevented from abusing their procedural and other rights and the rights of, *inter alia*, a party to proceedings that participates in the consideration of a civil case in good faith would not be violated. …

At the same time, it needs to be noted that the legislature, when regulating the respective relationships by means of a law, must pay regard to the Constitution, *inter alia*, the constitutional principles of a state under the rule of law, the equality of rights, the public and fair consideration of cases, the impartiality and independence of judges. It is necessary to establish, in laws, such a legal regulation whereby jurisdictional institutions and other law-applying institutions would be independent and impartial, that they would seek to establish the substantive truth in a case and adopt all decisions on the grounds of law, as well as that regard would be paid to the constitutional right of a person to the due process of law, which is derived from, *inter alia*, the constitutional principle of a state under the rule of law and is inseparably related to it.

Thus, under the Constitution, civil procedure relationships must be regulated by means of a law in such a manner that would create the legal preconditions for a court to investigate all circumstances important for a case and to adopt a just decision in such a case. And, on the other hand, it is not allowed to establish any such a legal regulation that would not permit a court, after it takes account of all important circumstances of a case and follows law, without violating the imperatives of justice and reasonableness, which arise from the Constitution, to adopt a just decision in a case and, thus, to administer justice. Otherwise, the powers of a court to administer justice, which arise from, *inter alia*, Article 109 of the Constitution, would be limited or even denied and the constitutional concept of a court as the institution that administers justice in the name of the Republic of Lithuania, as well as the constitutional principles of a state under the rule of law and justice, would be deviated from.

Under the Constitution, when civil procedure relationships are regulated, the right of a party to proceedings to participate in the consideration of a case directly or through a representative may not be denied, either, providing it itself has not self-removed from such participation. A party to the proceedings must be properly notified about the consideration of a case, while a court, at the beginning of the

consideration of the case, must ascertain whether it has been informed about any valid reasons due to which a party to the proceedings is not participating (it has not submitted its position in writing as regards the dispute, it does not request the extension of the time limit for the submission of its position, it fails to appear at a court hearing, etc.).

The constitutional obligation of a court to decide a case justly implies that, where the court believes that, if after one party to proceedings has self-removed from participating in the consideration of the case, it will not be able to consider that case justly or to adopt a just decision, it must take all possible measures in order to ensure the participation of such a party in the consideration of the case.

It also needs to be noted that, under the Constitution, the legal regulation of civil procedure relationships must be such that those participants to proceedings that have the same legal status would be treated equally. Thus, they must also have the same rights and duties, unless there are differences of such a nature and scope that unequal treatment would be objectively justified. Otherwise, the constitutional principles of a state under the rule of law and the equality of the rights of persons would be deviated from.

The Constitution also implies certain requirements that must be complied with by the legislature when it regulates appeals against court decisions adopted after a case is considered.

For instance, in its ruling of 16 January 2006, the Constitutional Court held that, under the Constitution, a law must establish such a legal regulation that would make it possible to file an appeal with a court of at least one higher instance against a final act adopted by a court of general jurisdiction or specialised court (established under Paragraph 2 of Article 111 of the Constitution) of first instance. … when civil procedure relationships are regulated by means of a law, also such a legal regulation must be established whereby it would be possible to file an appeal with a court of at least one higher instance against any final act that was adopted in a case by a court of first instance. It needs to be emphasised that a law must establish not only the right of a party to proceedings to file an appeal with a court of at least one higher instance against a final act that was adopted in a case by a court of first instance, but it must also establish such a procedure for filing the said appeal that would allow correcting the possible mistakes made by a court of first instance. Otherwise, the constitutional principle of a state under the rule of law would be deviated from and the constitutional right of a person to the due process of law would be violated.

At the same time, it needs to be noted that the Constitution does not prevent regulating civil proceedings in such a manner that would create no legal preconditions for parties to proceedings to abuse their right to appeal against a decision adopted in their case and, thus, to delay the proceedings.

… courts must pay regard to the principles and norms of civil procedure law. It needs be emphasised that this duty of a court may not be interpreted as allowing raising the principles and norms of civil procedure law or those of civil law above the principles and norms of the Constitution, or as permitting the interpretation of the principles and norms of civil procedure law or those of civil law in such a manner that would distort or ignore the meaning of the provisions of the Constitution.

[…]

It needs to be noted that, when account is taken of the objectives, essence, and nature of the adoption of a decision *in absentia* as a specific institution of civil procedure law and, especially, of the fact that such an institution is aimed at preventing both the abuse of the rights by parties and the delay of proceedings and at creating the legal preconditions for, *inter alia*, the protection of the rights and legitimate interests of honest parties to proceedings, certain limitations on reviewing a decision adopted *in absentia* are possible. Such limitations may be justified when a party to proceedings withdraws from the participation in the consideration of a civil case of its own will and when a court that is deciding whether to review a decision adopted *in absentia* is not provided with evidence confirming that the respective court decision is clearly unjust.

However, such legal situations are also possible where a court that is deciding whether to review a decision adopted *in absentia* is provided with such evidence that confirms that a certain court decision was clearly unjust and that the said decision clearly violated the rights of a person.

Requirements imposed on final court acts and on the publication thereof (*inter alia*, the requirement that an entire final court act (all arguments thereof) must be drawn up before it is officially passed and publicly pronounced)

The Constitutional Court's ruling of 21 September 2006

… the legislature must regulate court proceedings by means of laws in such a manner that the rational organisation of court work would be ensured.

When interpreting Article 109 of the Constitution in the context of other provisions of the Constitution, *inter alia*, that of the constitutional principles of a state under the rule of law, justice, the due process of law, legal clarity, legal certainty, and the publicity of law, in its ruling of 16 January 2006, the Constitutional Court held that:

"The constitutional imperatives that only courts administer justice, that law must be public, as well as the requirement, stemming from the Constitution, that a case must be considered in a fair manner, also imply that every court judgment (or another final court act) must be based on legal arguments (reasoning). The argumentation must be rational: a court judgment (or another final court act) must contain as many arguments as necessary in order that it would be sufficient to substantiate such a court judgment (or another final court act). In this context, it needs to be noted that the requirement of legal clarity, which arises from the constitutional principle of a state under the rule of law, means, *inter alia*, that a court judgment (or another final court act) may not contain any concealed arguments or any non-specified circumstances that are important for adopting a fair court judgment (or another final court act). Court judgments (other final court acts) must be clear for the persons participating in a case and for other persons. If this requirement is disregarded, then this is not the administration of justice that is consolidated in the Constitution.

While interpreting Article 109 of the Constitution in the context of the requirements of legal clarity, legal certainty, and legal publicity, as well as the requirement that human rights and freedoms, which arise from the constitutional principle of a state under the rule of law, must be ensured, it needs to be noted that the administration of justice also implies that a court judgment (or another final court act) is an integral legal act in which the operative part is based on the arguments set out in the part of reasoning. This means, *inter alia*, that when a court judgment (or another final court act) is officially published, it must contain all arguments upon which it is based, that the arguments (or part thereof) of a court judgment (or another final court act) may not be submitted by a court after the official publication of such a court judgment (or another final court act), and that, after the official publication of a court judgment (or another final act of the court), such a court may not change or otherwise modify its arguments.

In this context, it needs to be noted that, if such a court judgment (or another final court act) were published officially that would not be based on legal arguments or would be based only on a certain part of such arguments, while the remaining part of the arguments would be made public after the official publication of such a court judgment (or another final court act), justice would not be administered – there would always be a reasonable doubt that such arguments only seek to justify such a court judgment (or another final court act) that was adopted *a priori*.

Under the Constitution, the legislature has the powers to establish reasonable time limits within which a reasoned court judgment (or another final court act) must be published and, if necessary, to establish exceptions to the establishment of the general rules.

It needs to be emphasised that the said requirements concerning a judgment (or another final court act), its reasoning, publication, and time limits are *mutatis mutandis* applicable not only to criminal proceedings, but also to other types of legal proceedings."

… it needs to be emphasised that no cited doctrinal provision of the Constitutional Court's ruling of 16 January 2006 may be interpreted as the one that constitutionally obligates a court not only to draw up its final act (decision, judgment, order, ruling) before it is adopted and published, but also to pronounce it in the courtroom by reading aloud the entire text of that final act (which sometimes may be very long).

At the same time, it needs to be noted that the legislature, while seeking to ensure the rational organisation of court work and by taking account of the particularities of individual kinds of proceedings,

may provide, by means of a law, certain specially discussed exceptions when a final court act need not be read aloud in the courtroom; in such cases, a final court act must be pronounced publicly in another way. It needs to be emphasised that, when the said exceptions are established by means of a law, no preconditions may be created by which the rights and freedoms of a person and other constitutional values would be violated.

Of course, while paying regard to the constitutional imperative of the publicity of law, the introductory and operative parts of an adopted final court act, which is signed by the judges, must be pronounced publicly by reading them aloud in the courtroom (save the said exceptions). As regards reading aloud other parts of a final court act in the courtroom, the legislature may also establish a different legal regulation; such a legal regulation would most appropriately conform to various provisions of the Constitution (*inter alia*, the requirement of the publicity of law) where a court would be able in each case to decide, at its discretion, as to which part or parts of its final act must be pronounced publicly by reading them aloud in the courtroom, save the introductory and operative parts, which must always be read aloud in the courtroom (save the said exceptions). If a final court act is adopted and signed by all judges who have considered the respective case, the non-reading aloud of part of the act should not be regarded as deviation from justice, the publicity of law, and other constitutional imperatives. The most important thing here is not that an entire final court act (*inter alia*, all arguments substantiating it – the reasoning of its adoption) should be read aloud in the courtroom, but that it all would be drawn up before that final court act is adopted, i.e. before the judges vote on it and sign it, and before such a final court act is publicly pronounced, also that, straight after the court hearing in which the respective final court act is pronounced, immediately, i.e. within the reasonable and shortest possible time, the said final court act (its copy) would be accessible to the parties to the case, to other participants of the proceedings with respect to whom such a final court act directly gives rise to certain legal effects, as well as to institutions that must execute the respective court decisions.

By means of each final court act, justice is administered in a particular case. A final court act adopted in a certain case is one act of the application of law, whereby that case is completed. Thus, a final court act is one legal act, one document, but not several legal acts (documents), let alone not several legal acts (documents) that are drawn up and signed at a different time. A final court act must be an integral act. As an integral legal act, it must be signed by all judges who have considered the respective case. A final court act must not be ambiguous; it must be clear and comprehensible already at the time when a decision on the merits of the considered issue is adopted and publicly pronounced, but it must not be such an act that would make the parties and other participants to the proceedings guess why and due to what actual reasons precisely this court decision in question and not a different court decision was adopted.

It needs to be especially emphasised that the requirement for the integrity of a final court act (by which justice is administered in a particular case) expresses such a characteristic of the said act without which this act would not be an act of the administration of the justice that is provided for in the Constitution; thus, under the Constitution, it would not be an act of the administration of justice.

The requirement of the integrity of a final court act, which arises from the Constitution, also means that the operative part of such an act must always, without exceptions, be substantiated by the circumstances and arguments that are *expressis verbis* set out in the fact-finding part and/or the reasoning part (if, according to laws, there must be a separate fact-finding part or a separate reasoning part). Thus, a final court act may not, under any circumstances, be "stitched" from separate fragments (separate documents), which are drawn up at a different time.

It needs to be held that the requirement of the integrity of a final court act, which arises from the Constitution, and the constitutional imperative that a court adopts decisions in the name of the Republic of Lithuania, that a final court act, regardless of whether it is pronounced in its entirety (by reading it aloud) in the courtroom, or whether only its introductory and operative parts are pronounced, or whether it is made public in another way (if this is one of the exceptions discussed in this ruling of the Constitutional Court, which is constitutionally allowed), must always be signed by all the judges who have considered the case. If such a court decision is not confirmed by the signatures of the judges (or if some of its fragments as separate

documents are signed by the judges, while other fragments are not or are signed by not all of the judges), it should not be regarded as a final court act and its reasonableness and lawfulness may be questioned.

A law must establish such a legal regulation that would effectively guarantee that decisions that have not been signed by judges will not be adopted or pronounced and that, where such decisions are still adopted, there must be the possibility of challenging them.

[…]

… it needs to be especially emphasised that the drawing up of any final court act (decision, judgment, order, ruling) before its official adoption (i.e. before the judges vote on it and sign it) and its official pronouncement is not an objective in itself; rather, it is a means allowing ensuring that all circumstances important for the case will be established precisely before a certain final court act is officially adopted and publicly pronounced, that all important arguments will be assessed and all of them weighed properly before that final court act is officially adopted, that legal acts will be properly applied, etc. The fact is of no less importance that the drawing up of a final court act before it is officially adopted and publicly pronounced is one of the means making it possible to achieve such a situation where all judges of the panel (in cases where a case is considered not by one judge, but by a panel of judges) will equally understand all the arguments substantiating a final court act (even if they will interpret and assess these arguments differently), because only after the arguments – the reasoning of its adoption – substantiating a final court act are drawn up, it is possible to verify and ascertain that they are not inconsistent or that they do not conflict with one another and are without other faults and, if this is so – to modify these arguments; therefore, it is necessary that such arguments be drawn up before a final court act is officially adopted and pronounced.

Thus, the drawing up of a final court act before its official adoption and public pronouncement is one of the legal guarantees that justice will be administered in the respective case; if it were otherwise, i.e. if a final court act were not substantiated by legal arguments or were substantiated only by a certain part of arguments, while the other part of arguments were drawn up and made public later, after the public pronouncement of the respective final court act, justice would not be administered, since there would always be a reasonable doubt whether such arguments drawn up later seek to justify a final court act adopted *a priori*; thus, there would also be a doubt as to whether such a final court act is actually substantiated solely by arguments (reasoning) that are formally drawn up therein.

At the same time, it needs to be noted that the legislature has the unquestionable powers to establish, by means of a law, a structure of a final court act, *inter alia*, the fact that in a final court act there should be a separate part or parts where certain circumstances of a case, arguments, etc. must be set out. In addition, the legislature, while taking account of the variety of types of considered cases, the particularities of legal proceedings in consideration of cases of certain categories, and other important factors, may also establish, by means of a law, a different structure of final court acts for cases of certain categories and/or for certain courts.

However, under the Constitution, it is not permitted to establish any such a legal regulation whereby a court must or could adopt, at its discretion, let alone adopt and publicly pronounce, its final acts not in their entirety, but only a certain part or parts thereof, *inter alia*, their operative part, which is not substantiated by arguments drawn up, i.e. set out *expressis verbis*, or by circumstances specified in that final act, and whereby such arguments could be drawn up and the relevant circumstances could be specified after some time.

As mentioned before, a final court act must be clear ad comprehensible already at the time when a decision on the merits regarding the considered issue is adopted and publicly pronounced, but it must not be such an act that would make the parties and other participants to the proceedings guess why and due to what actual reasons precisely this court decision in question and not a different court decision was adopted.

In this context, it needs to be mentioned that, if a final court act is drawn up not in its entirety before it is officially adopted and publicly pronounced, especially when its operative part is pronounced before the arguments substantiating the final court act – the reasoning of adopting it – are drawn up, then during the whole time until these arguments (reasoning) are drawn up, there will always be the possibility that a certain judge or judges of the panel that has considered the case and adopted the decision on the merits (which was

set out in the operative part of the respective final court act), due to certain circumstances in life, from which no one is immune, which are always possible and may fall upon any individual (for example, sickness, an accident, or even death), will not be able to continue his/her participation in drawing up the arguments substantiating the said court decision (its operative part) that had already been adopted and publicly pronounced. Consequently, in such cases, a final court act in general will not be able to be drawn up; although publicly pronounced (i.e. although its operative part has been pronounced), it will remain unfinished and not fully fledged, or the said arguments will be drawn up (will be signed) not by all judges of the panel, but only by some of them; in other words, the composition of the court will not be exactly the same. While, if a case was investigated not by a panel of judges, but by a single judge, the said circumstances in life, should they occur, would lead to a situation where there would be no one who could draw up the arguments substantiating a final court act – the reasoning of adopting it – after its operative part is adopted and publicly pronounced. It is clear that, in such cases, justice would be administered only formally; thus, in reality, it would not be administered.

Summing up, it needs to be held that the Constitution does not tolerate any such a legal and factual situation where a final court act (decision, judgment, order, ruling) is officially adopted and publicly pronounced not in its entirety, *inter alia*, when the operative part (in which a decision on the merits is set out) is officially adopted and publicly pronounced, while the arguments substantiating the operative part (i.e. a court decision set out in the operative part) – the reasoning of adopting such a final court act – are drawn up later, *post factum*.

Under the Constitution, such final court acts are not regarded as acts of the administration of justice, which, under the Constitution, are adopted in the name of the Republic of Lithuania; quite to the contrary, such final court acts themselves can create the preconditions for violating the rights and freedoms of a person and other values consolidated, defended, and protected by the Constitution.

The protection of state secrets (other classified information) in court proceedings; the right of a judge to have access to a state secret or other classified information (Articles 109 and 117 of the Constitution)

The Constitutional Court's ruling of 15 May 2007

When revealing the content of the constitutional institution of a state secret, it should … be noted that the Constitution consolidates the grounds for the protection of information that is not subject to publication, *inter alia*, a state secret, when courts consider and decide cases: Paragraph 1 of Article 117 of the Constitution provides that, "In all courts, the consideration of cases shall be public" and that "A closed court hearing may be held in order to protect the secrecy of private or family life, or where the public consideration of the case might disclose a state, professional, or commercial secret". Thus, the constitutional principle of the public consideration of cases in courts is not absolute or without exceptions, *inter alia*, as regards the fact that there can be a closed court hearing if publicity posed the threat that a state secret might be disclosed.

Paragraph 1 of Article 109 of the Constitution, whereby, in the Republic of Lithuania, justice is administered only by courts, gives rise to the duty of courts to consider cases justly and objectively, as well as to adopt reasoned and substantiated decisions; therefore, there may not be any such a legal situation where a court would not be able to have access to such case material that contains information constituting a state secret (or other classified information). In its ruling of 19 December 1996, the Constitutional Court held that "the right of a judge who investigates a case to have access to information that is considered a state secret is based on Article 109 of the Constitution … as well as on Article 117 of the Constitution" and that "the right of a judge to have access to information that is considered a state secret and is necessary for the investigation of a case is determined by the function of a court as a state institution to administer justice, but not by entering the position of a judge on the list of certain positions".

The possibilities for parties to a case considered by a court to have access to information that constitutes a state secret (as well as other classified information), where the court decides that this information may be regarded as evidence in the case, must be defined in laws; it is necessary to establish such a legal regulation

that would create the conditions for a court considering a case to protect state secrets (as well as other classified information) from such disclosure that could inflict harm on the public interest protected by the Constitution.

[…]

In view of the fact that, on the one hand, the necessity to protect information constituting a state secret (or other classified information) is a public interest and, on the other hand, it is necessary to ensure the right of a person to judicial protection, a law must establish the grounds, procedure, and conditions for access to information constituting a state secret (or other classified information) in the course of the consideration of a case by a court, provided the court decides that information in question may be regarded as evidence in the case; it is also necessary to establish such a legal regulation governing the respective procedural actions that would ensure the compliance with the constitutional principle of proportionality and would maintain a balance between the two said constitutional values – the protection of a state secret (or other classified information) as a public interest and the rights and freedoms of a person that are defended by the said person in a court. It is necessary to establish such a legal regulation whereby a court could administer justice without denying any of these values.

Consequently, a law must establish such a legal regulation whereby, on the one hand, a party to a case may request the court to declare certain information that constitutes a state secret (or other classified information) to be evidence in the said case (if such information, in the opinion of the said party, has an evidential value) and, on the other hand, the court must every time decide whether such a request is a justified one and whether it may be granted (either in its entirety or in part) according to the law, whether, in the case where it is granted (either in its entirety or in part), the public interest (to ensure the protection of a state secret (or other classified information)), as well as the values consolidated, defended, and protected by the Constitution, *inter alia*, the rights and freedoms of other persons, as well as international obligations of the Republic of Lithuania, will be harmed. As such, the said right of a party to a case to request the court to declare such information that constitutes a state secret (or other classified information) to be evidence in the respective case does not imply that the court must grant such a request (either in its entirety or in part) or that the said party must have access to information constituting a state secret (or other classified information); the fact that certain information constituting a state secret (or other classified information) could be evidence in a certain case depends on many factors that must be taken into account by the court. In this context, it should be mentioned that, as it has been held by the Constitutional Court, the public interest is dynamic and subject to change (rulings of 8 July 2005 and 21 September 2006); the public interest is very varied; therefore, it is virtually impossible to say *a priori* in which spheres of life, due to which legal disputes may arise or in which the need may arise to apply law, threats may occur to the public interest (*inter alia*, the protection of secrets that must be protected under the international obligations of the Republic of Lithuania) or the need may arise to ensure the public interest by means of interference by public power institutions or officials. Thus, it is impossible to define (enumerate) *a priori* all situations where information that constitutes a state secret (or other classified information) may not be declared to be evidence by a court decision and, thus, parties to a case may not have access to such information. However, obviously, if a court deems that, in order to adopt a decision in the case before it and to administer such justice as consolidated in the Constitution, there is enough such evidence (material) that is not information constituting a state secret (or other classified information), then information not to be disclosed should not, in order to protect the public interest, be evidence in that case and the parties to the case may not have access to it.

It needs to be emphasised that special responsibility falls upon a court that considers a case where it decides whether certain information constituting a state secret (or other classified information) may be declared to be evidence in the respective case.

[…]

At the same time, it needs to be emphasised that no court decision may entirely be substantiated by information constituting a state secret (or other classified information), which is unknown to the parties (one party) to the case.

It also needs to be emphasised that court decisions, *inter alia*, decisions whereby certain information constituting a state secret (or other classified information) is not evidence in the respective case, may be appealed against in accordance with the procedure prescribed in laws.

It needs to be noted that the legal regulation governing the discussed legal relationships may have certain particularities determined by the fact whether cases are considered according to criminal procedure, civil procedure, or administrative procedure.

Filing a complaint against a final act of a court of first instance (initiating the review of such an act); the prohibition preventing courts of higher instances from assessing the lawfulness or reasonableness of such orders of courts of lower instances by which they apply to the Constitutional Court

The Constitutional Court's ruling of 24 October 2007

… as held in the Constitutional Court's ruling of 21 September 2006, under the Constitution, civil procedure relationships must be regulated by means of a law in such a way that would create the legal preconditions for a court to investigate all circumstances that are important for a case and to adopt a just decision in such a case and that would make it possible to file an appeal with a court of at least one higher instance against any final act that was adopted at a court of first instance. In the same ruling, the Constitutional Court also held that a law must establish not only the right of a party to proceedings to file an appeal with a court of at least one higher instance against a final act that was adopted in a case by a court of first instance, but it must also establish such a procedure for filing the said appeal that would allow correcting the possible mistakes made by a court of first instance; otherwise, the constitutional principle of a state under the rule of law would be deviated from and the constitutional right of a person to the due process of law would be violated. It was also held in the same ruling of the Constitutional Court that, "by each final court act, justice is administered in a particular case" and that "a final court act adopted in a certain case is one act of the application of law, whereby that case is completed".

In the context of the necessity (which arises from the Constitution) to provide for the possibility of filing an appeal with a court of at least one higher instance against any final act that was adopted in a case by a court of first instance, it needs to be noted that, until the adoption of a final act by a court in a case, the court has to adopt the procedural decisions of a varied form and nature, by which such a case is not completed. Such procedural court decisions are not final acts of a court. The Constitution does not require that the possibility be ensured, by means of a law, to file a complaint against any procedural decision of a court (i.e. not a final act) adopted in a case; various exceptions are possible in this area. Attention should be paid to the fact that, as held in the Constitutional Court's ruling of 21 September 2006, the Constitution does not prevent regulating civil proceedings in such a manner that would create no legal preconditions for parties to proceedings to abuse their right to appeal against a decision adopted in their case and, thus, to delay the proceedings.

In this context, it should be noted that the phrase "filing a complaint with a court of at least one higher instance against a final act that was adopted in a case by a court of first instance" is used in the jurisprudence of the Constitutional Court (as well as in this ruling of the Constitutional Court) in its constitutional legal meaning, but not in the manner that this phrase could be used (is used) in ordinary law. The legislature, while regulating civil procedure relationships, has a certain degree of discretion to establish various grounds and time limits for filing such a complaint, as well as various judicial institutions with which it is allowed to file a complaint against final acts of a court of first instance, and to consolidate separate institutions in civil procedure laws. In exceptional cases and only if it is possible to substantiate it constitutionally (*inter alia*, by the fact that it is not allowed to create any such legal preconditions that could permit parties to proceedings to abuse their right to file a complaint against a decision adopted in their case and, thus, to delay the proceedings), a law may establish (without creating any legal preconditions for violating the rights of a person or other constitutional values or for deviating from the requirements of the due process of law) such a legal regulation that would make it possible to file a complaint against certain final acts adopted by a court

of first instance not with a court of higher instance, but with the court that adopted the respective final act (every such situation could be subject to constitutional review). In this respect, the notion "filing a complaint" (which, as mentioned before, is used not in the ordinary, but constitutional legal sense) encompasses not only filing the respective complaint (of appeal or cassation level) provided for in civil procedure laws, by means of which attempts are made to initiate the review of this final act (also to renew the consideration of the case), but also other situations of filing a complaint against a final act adopted by a court of first instance. In defining such situations, civil procedure laws may consolidate various notions (not only the notion "filing a complaint"), which reflect the respective separate institutions of civil procedure. However, the Constitution does not allow establishing any such a legal regulation whereby, in cases of a certain category, it would be altogether impossible in all situations to seek to initiate a review of a final act adopted by a court of first instance in the respective case, since, thus, the possibility of correcting the possible mistakes made by the court, applying law justly, and administering justice would be denied; upon establishing such a legal regulation, the constitutional concept of justice would be limited only to formal and nominal justice administered by a court and only to the appearance of justice administered by a court, but it would not mean the justice that is consolidated, protected, and defended by the Constitution; a legal regulation laid down in civil procedure laws (i.e. in ordinary law) would be placed above the principles and norms of the Constitution.

It needs to be emphasised that a court, while suspending the consideration of a case because of the application to the Constitutional Court or an administrative court, does not decide such a case on its merits, but only creates the preconditions for adopting a just final act in the said case after receiving an answer from the Constitutional Court or the administrative court. … in cases where a court considering a case faces doubts whether a law (another legal act) applicable in the case is in conformity with the Constitution, it must apply to the Constitutional Court and request it to decide whether that law (another 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. Thus, the application to the Constitutional Court or an administrative court and the suspension of a case in which it was decided to apply to the Constitutional Court or an administrative court are procedural actions, which are inseparably interrelated.

[…]

… since a court order by which the consideration of a case is suspended and the court applies to the Constitutional Court or an administrative court does not complete the case, such an order is not a final act of the court and the Constitution does not guarantee the possibility of filing a complaint against such an order with a court of at least one higher instance.

On the other hand, the fact that the Constitution does not require that the possibility be ensured by means of a law to file a complaint against any court procedural decision (i.e. not a final act) adopted in a case does not mean that a court, while adopting such a decision, may disregard the requirements established for acts and, in particular, final acts adopted by courts. The requirements established (*inter alia*, regarding argumentation, clarity, and comprehensiveness) for final acts of courts 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 to a case before 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 case before the court, is in conflict with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution (ruling of 28 March 2006 and the decision of 5 July 2007).

[…]

It needs to be emphasised that, under the Constitution, the grounds for initiating a constitutional justice case at the Constitutional Court are doubts faced by a court (judge) considering a concrete case regarding the conformity of a legal act applicable in that case with the Constitution (another higher-ranking legal act): such doubts must be removed so that the said court could adopt a just decision (another final act) in that case.

It is only the Constitutional Court that may remove such doubts (i.e. deny or confirm their reasonableness) within its competence. Thus, no court of general jurisdiction or specialised court (established under Paragraph 2 of Article 111 of the Constitution) of higher instance has the powers to assess the lawfulness and/or reasonableness of an order of a court of lower instance to suspend the consideration of a case and to apply to the Constitutional Court regarding the compliance of a legal act (part thereof) with the Constitution (another higher-ranking legal act), since, otherwise, the preconditions would be created for violating the exclusive competence of the Constitutional Court, which is established in Paragraph 1 of Article 102 of the Constitution, as well as for virtually denying the powers of a court (judge) (which are established in Paragraph 2 of Article 110 and Paragraphs 1, 2, and 3 of Article 106 of the Constitution) to suspend the consideration of a case and apply to the Constitutional Court.

The prohibition (which stems from the Constitution) preventing courts of higher instance from assessing the lawfulness and/or reasonableness of an order of a court of lower instance to suspend the consideration of a case and to apply to the Constitutional Court regarding the compliance of a legal act (part thereof) with the Constitution (another higher-ranking legal act) is also *mutatis mutandis* applied to the orders of courts on applying to the respective administrative court with a petition requesting an investigation into whether a legal act (part thereof) that must be applied in the particular case and the review of which in terms of its compliance with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution, is assigned to the jurisdiction of administrative courts, but not the Constitutional Court, is in conflict with the Constitution (another higher-ranking legal act).

The right to file an appeal against a final act of a court of first instance

The Constitutional Court's ruling of 24 January 2008

… as it has been held by the Constitutional Court, the constitutional right of a person to apply to a court and the instance system of courts imply that a law must establish such a legal regulation that would make it possible to file an appeal with a court of at least one higher instance against a final act adopted by a court of general jurisdiction or specialised court (established under Paragraph 2 of Article 111 of the Constitution) of first instance (rulings of 16 January 2006, 28 March 2006, 21 September 2006, 27 November 2006, and 24 January 2007). Justice is always administered by leaving the possibility of rectifying a possible mistake or changing a judgment in the light of new circumstances (ruling of 9 December 1998). The Constitutional Court has held that a law must establish not only the right of a party to the proceedings to file an appeal with a court of at least one higher instance against any final act that was adopted in a case by a court of first instance, but also it must establish such a procedure for filing the said appeal that would allow a court of higher instance to correct the possible mistakes made by a court of first instance; otherwise, the constitutional principle of a state under the rule of law would be deviated from and the constitutional right of a person to the due court process would be violated (rulings of 21 September 2006 and 24 October 2007); the said correction of mistakes made by courts of lower instance and the related prevention of injustice is the *conditio sine qua non* for the trust of parties to the respective proceedings and society in general not only in the court of general jurisdiction that considers the respective case, but also in the whole system of courts of general jurisdiction (ruling of 28 March 2006).

… the purpose of the institution of filing an appeal against a final act of a court of first instance is not only the defence and protection of the rights of a person (convict) who has been brought to legal responsibility, but also the defence and protection of the rights and legitimate interests of other persons, *inter alia*, a victim, as well as the defence and protection of the public interest and the legal order of the state.

Facts established by a court decision are *res judicata*

The Constitutional Court's ruling of 13 May 2010

Facts established by an effective court decision are *res judicata* and … they are not proved anew.

The principle of the public consideration of cases in a court (Paragraph 1 of Article 117 of the Constitution)

The Constitutional Court's ruling of 6 December 2012

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

Paragraph 1 of Article 117 of the Constitution consolidates the principle of the public consideration of cases in courts, stipulates that a closed court hearing may be held in certain circumstances, and provides for a list of such circumstances (ruling of 19 September 2000).

[…]

… the provision "in all courts" of Paragraph 1 of Article 117 of the Constitution embraces the courts of all systems, the courts of all levels, and the courts of all instances.

[…]

The principle of the public consideration of cases in a court, as consolidated in Paragraph 1 of Article 117 of the Constitution, the interest of the public to be informed, which stems from the Constitution (*inter alia*, from Article 25 thereof), Paragraph 5 of Article 25 of the Constitution, under which citizens have the right to receive, according to the procedure established by law, any information held about them by state institutions, as well as the constitutional principle of a state under the rule of law, *inter alia*, the requirement for legal clarity, imply the duty of the legislature to regulate, by means of a law, the relationships of the consideration of cases in a court in such a way that would create the conditions both for the participants of proceedings and for the public, *inter alia*, to be aware of cases considered in courts, the composition of courts considering cases, disputes resolved in such cases, and the adopted decisions.

It needs to be noted that, under the Constitution, the public consideration of cases is not an objective in itself. The public consideration of cases is one of the conditions for administering and ensuring justice. The public consideration of cases in a court creates the preconditions for ensuring the implementation of the law expressed in the Constitution, in laws, and in other legal acts, for guaranteeing the supremacy of law, and for protecting the rights and freedoms of persons. While ensuring the principle of the public consideration of cases in a court, the legislature is obliged to pay regard to the norms and other principles of the Constitution and not to create the preconditions for violating the values (*inter alia*, the rights and freedoms of persons) that are consolidated, defended, and protected by the Constitution.

[…]

It also needs to be noted that the principle of the public consideration of cases in a court is not absolute. Paragraph 1 of Article 117 of the Constitution, in which the said principle is consolidated, provides both for certain exceptions to the publicity of the consideration of cases and for situations where a closed court hearing may be held: in order to protect the secrecy of private or family life, or where the public consideration of a case may disclose a state, professional, or commercial secret. Thus, under Paragraph 1 of Article 117 of the Constitution, the publicity of proceedings is limited for the purposes of protecting the private or public interest. The principle of the public consideration of cases in a court may also be limited by means of a law with a view to protecting other constitutional values. For instance, the principle of the independence of judges and courts, which is consolidated, *inter alia*, in Article 109 of the Constitution, gives rise to the requirement for the secrecy of deliberation by judges when adopting a decision. In addition, in order to protect human dignity, the inviolability of private life (Article 22 of the Constitution), and other values, the protection of which stems from the Constitution, it is permitted to limit, by means of a law, the publicity of separate elements of the process of the consideration of cases, *inter alia*, the public pronouncement of a final act of a court, and the publicity of the material of a case.

The constitutional principle of the public consideration of cases in a court likewise determines the publicity of a court hearing in which a case is considered. With a view to ensuring the publicity of a court hearing as an element of the consideration of cases in a court, the legislature must regulate the procedure for court hearings in order that the conditions are created to ensure the right of the participants of proceedings

to express their opinion on all the issues that are decided in the respective case, as well as the interest of the public to be informed about court proceedings and about the adopted decisions. Paragraph 1 of Article 117 of the Constitution and other norms of the Constitution give rise to the duty of the legislature to establish such forms of a court hearing that would create the conditions for ensuring the implementation of the right of the participants of proceedings to public court proceedings, as well as the interest of the public to be informed; at the same time, the aforesaid forms of a court hearing may not create any preconditions for violating the values (*inter alia*, the rights and freedoms of a person) consolidated, defended, and protected by the Constitution.

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

The Constitutional Court's ruling of 15 November 2013

… in criminal procedure law, the provision of Paragraph 1 of Article 109 of the Constitution that justice is administered only by courts, *inter alia*, means that, during a trial, a court of first instance, while performing this function, must thoroughly, fully, and objectively investigate all circumstances of a criminal case and decide such a case on its merits. … courts and judges, in the course of the administration of justice, are not bound by evidence obtained during the pretrial investigation of a case: the constitutional obligation of a court is a comprehensive, thorough, and objective investigation into all material of a case and the adoption of a just decision (*inter alia*, the rulings of 5 February 1999 and 8 May 2000).

[…]

Under Paragraph 1 of Article 109 of the Constitution and the constitutional principles of a state under the rule of law and justice, courts have the duty not only to investigate all circumstances of criminal cases in an exhaustive and impartial manner, but also to correctly apply criminal laws, *inter alia*, to properly classify a criminal act committed by the accused person. A court must investigate whether a criminal act specified in the indictment was committed in the substantial circumstances specified precisely in the said indictment with the exception of the situations where the prosecutor, the private prosecutor, or the victim submit the request that the factual circumstances specified in the indictment be changed to circumstances that are different in substance. …

… under the Constitution, *inter alia*, Paragraph 2 of Article 31 and Paragraph 1 of Article 109 thereof, and under the constitutional principles of a state under the rule of law and justice, the possibilities must be created for a court considering a criminal case to change, on its own initiative, the factual circumstances specified in the indictment to circumstances that are different in substance. While implementing this right, a court must inform the accused and other participants of the court trial about such a possibility, must ensure the right to be informed about the accusation, the right to defence, and the implementation of other constitutional principles of the due process of law.

The administration of justice in criminal cases (Paragraph 1 of Article 109 of the Constitution); the correction of mistakes made by courts of lower instance in establishing and assessing legally significant facts

The Constitutional Court's ruling of 26 June 2017

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

When interpreting Article 109 of the Constitution, the Constitutional Court has held on more than one occasion (*inter alia*, in the rulings of 21 December 1999, 9 May 2006, and 8 May 2014) that, in the course of administering justice, courts must ensure the implementation of the law expressed in the Constitution, laws, and other legal acts, must guarantee the supremacy of law, and must protect human rights and freedoms. The constitutional concept of the administration of justice also implies that courts must decide cases only by strictly adhering to the procedural and other requirements established in laws, without exceeding the limits of their jurisdiction and without exceeding their other powers (*inter alia*, the rulings of

16 January 2006 and 15 November 2013). Paragraph 1 of Article 109 of the Constitution gives rise to the duty of courts to consider cases in a fair and objective manner and to adopt reasoned and well-founded decisions (*inter alia*, the rulings of 15 May 2007, 31 January 2011, and 8 May 2014). The principle of justice consolidated in the Constitution, as well as the provision that justice is administered by courts, means that not the adoption of a decision as such in a court, but, rather, the adoption of a just court decision, constitutes a constitutional value; the constitutional concept of justice implies not perfunctory and nominal justice administered by a court, not an outward appearance of justice administered by a court, but such court decisions (other final court acts) that are not unjust by their content; justice administered by a court only in a perfunctory manner is not the justice that is consolidated, protected, and defended by the Constitution (*inter alia*, the rulings of 21 September 2006, 25 September 2012, and 8 May 2014).

The Constitutional Court has noted in its jurisprudence on more than one occasion that it is not allowed to establish such a legal regulation that would prevent a court from adopting a just decision in a case and, thus, from implementing justice where the court takes into account all significant circumstances of the case, follows law, and does not violate the imperatives of justice and reasonableness stemming from the Constitution; otherwise, the powers of a court to administer justice, which stem, *inter alia*, from Paragraph 1 of Article 109 of the Constitution, would be limited or even denied, and the constitutional concept of courts as the institutions administering justice in the name of the Republic of Lithuania, as well as the constitutional principles of a state under the rule of law and justice, would be deviated from (*inter alia*, the rulings of 21 September 2006 and 6 December 2013).

The Constitutional Court held in its ruling of 16 January 2006 that the necessity to protect the rights and legitimate interests of a person, also the fact that a court is a state institution that, when administering justice, helps the state to ensure the security of a person and all society against criminal attempts, determine certain powers of a court in criminal proceedings; in criminal proceedings, a court must also be an impartial arbiter, which objectively assesses the data (evidence) in a criminal case regarding the circumstances of committing a criminal act and adopts a fair decision concerning the guilt of a person accused of having committed the criminal act; at the same time, in order to establish the truth, a court must take an active part in criminal proceedings: a court must define the limits of the consideration of a criminal case, must perform certain procedural actions, must ensure that persons participating in court proceedings do not abuse their rights or powers, and must resolve other issues related to the consideration of a criminal case before the court; while considering a criminal case, a court must act in such a way that the truth is established in the criminal case and the question of the guilt of a person accused of having committed a criminal act is fairly resolved. Under Paragraph 1 of Article 109 of the Constitution and the constitutional principles of a state under the rule of law and the right to the due court process, courts have the duty not only to investigate all circumstances of criminal cases in an exhaustive and impartial manner, but also to correctly apply criminal laws, *inter alia*, to properly qualify a criminal act committed by the accused (ruling of 15 November 2013).

[…]

… in view of the fact that such situations are possible where a court considering a criminal case under the appeal procedure, having examined new evidence or evidence already examined by the court of first instance, in cases where an assessment of the said evidence could lead to the conclusion that the factual circumstances are essentially different from those established by the court of first instance and that this could result in the worsening of the situation of the convicted or acquitted person, or the situation of the person against whom the case has been dismissed, is restricted … by the legal principles of criminal procedure [*non reformatio in peius* (under which, while considering a case following an appeal of a convicted or acquitted person, or a person against whom the case has been dismissed, the court is prohibited from worsening the legal situation of the appellant) and *tantum devolutum quantum appellatum* (under which the court must verify and assess the lawfulness and reasonableness of only that part of the decision of the court of first instance regarding which the appeal has been filed)] and cannot itself correct the mistakes made by the court of first instance in establishing and/or assessing legally significant facts, it should be noted in the context of the constitutional justice case at issue that the powers of courts to administer justice, stemming

from the Constitution, *inter alia*, Paragraph 1 of Article 109 thereof, imply that a law must establish the powers of the court of appeal instance to refer in such a situation the case back to the court of first instance for reconsideration.

[…]

… under the Constitution, a court has the duty not only to investigate all the circumstances of a case that would allow the court to adopt a fair and reasonable decision, but also to deliver this decision within the shortest possible time. The said duty implies that, having investigated and assessed evidence leading to the conclusion that the factual circumstances essentially differ from the circumstances established by the court of first instance, the court considering the criminal case under the appeal procedure should annul the judgment of the court of first instance and refer the case back to it for reconsideration only in such a case where the situation of the convicted or acquitted person, or the situation of the person against whom the case has been dismissed, could be worsened in substance.

[…]

… the legislature has broad discretion to regulate criminal procedure relationships and may establish various models for considering criminal cases before the court of appeal. However, the legislature may not establish such a legal regulation that would preclude a court of higher instance, having regard to all the circumstances of the case and following law and the imperatives of justice and reasonableness, which stem from the Constitution, from adopting a fair decision in the case and effectively ensuring the constitutional right of the person to proper and fair criminal proceedings.

Therefore, in order to ensure the right of a person to a trial within the shortest possible time, as well as to the adoption of a fair and reasonable court decision based on the circumstances of the case, and to the rights of defence, and having regard to the chosen model of the consideration of criminal cases in a court of appeal instance, the legislature can also establish other ways to remove, in the courts of higher instance, any mistakes that may be made due to some reasons by a court of lower instance in establishing and assessing legally significant facts; *inter alia*, the legislature can provide for the right of a prosecutor, private prosecutor, victim, or civil claimant to file (or supplement) an appeal in cases where, upon investigating and assessing the evidence in the court of appeal instance, the conclusion could be reached that the factual circumstances are essentially different from those established by the court of first instance and this can result in the worsening of the situation of the convicted or acquitted person, or the situation of the person against whom the case has been dismissed.

At the same time, it needs to be noted that … the right of a person to a well-founded (reasoned) decision is an integral part of the constitutional right to a fair trial, which implies the need for a higher court, *inter alia*, a court of appeal instance, to have all procedural possibilities of adequately examining the received appeals and adopting just and well-founded (reasoned) decisions; in addition, correcting mistakes made by courts of lower instance and the related prevention of injustice is a necessary precondition for guaranteeing and encouraging trust in the judicial system by parties to a case and society in general.

The execution of effective court decisions

The Constitutional Court's ruling of 25 November 2019

… effective court decisions are binding on all institutions of state power and governance and all legal and natural persons (decision of 13 November 1997 and the ruling of 24 September 1998). By adopting and executing court decisions in the state, justice is implemented, the stability of the legal relationships established and confirmed by effective court decisions is guaranteed, and the trust of the subjects of law in the state authorities and laws is strengthened (decision of 13 November 1997). The facts established by an effective court decision are *res judicata* and they are not proved anew (ruling of 13 May 2010). Consequently, under the Constitution, *inter alia*, Article 109 thereof, according to which only courts administer justice, as well as under the constitutional principles of justice and a state under the rule of law, failure to execute effective court decisions in the absence of constitutionally justifiable grounds cannot be tolerated.

9.2. THE PROSECUTION SERVICE

The constitutional status of prosecutors (Article 118 (wording of 20 March 2003) of the Constitution)

The Constitutional Court's ruling of 13 May 2004

Under the Constitution, the prosecution service of the Republic of Lithuania is a centralised state institution with specific authoritative powers; it is not categorised as belonging to the institutions that are indicated in Paragraph 1 of Article 5 of the Constitution, which execute state power. The prosecution service of the Republic of Lithuania is not a constituent part of judicial power.

Article 118 of the Constitution consolidates the functions of prosecutors: a pretrial investigation is organised and directed, and charges on behalf of the state in criminal cases are upheld by prosecutors (Paragraph 1); in cases established by law, prosecutors defend the rights and legitimate interests of the person, society, and the state (Paragraph 2). Paragraph 3 of Article 118 of the Constitution provides that, when performing their functions, prosecutors are independent and obey only the law.

Thus, a prosecutor is a state official that has specific authoritative powers. Under the Constitution, no one else but a prosecutor may organise a pretrial investigation and be in charge of it; also, under the Constitution, no one else but a prosecutor may uphold charges on behalf of the state in criminal cases. At the same time, it needs to be noted that, under the Constitution, the functions of a prosecutor are different from the administration of justice.

A pretrial investigation

The Constitutional Court's ruling of 16 January 2006

… the institutions of a pretrial investigation and of upholding charges on behalf of the state in criminal cases, which are consolidated in the Constitution, imply such a general constitutional model of criminal procedure according to which a pretrial investigation and the consideration of criminal cases in a court are different stages in criminal procedure.

… during a pretrial investigation, the necessary information is collected and assessed in order to decide whether the pretrial investigation must be continued and whether, after it has been completed, the respective criminal case must be referred to a court; in addition, the said information is collected and assessed in order to consider a case referred to a court and to decide it in a fair manner.

While regulating, by means of a law, a pretrial investigation and conducting such an investigation, it is necessary to follow the norms and principles of the Constitution, which, *inter alia*, consolidate the equality of the rights of persons, the inviolability of freedom of an individual, the prohibition on degrading human dignity, the inviolability of the human person, the inviolability of private life, the inviolability of the home of a human being, the presumption of innocence, the right of a person to judicial protection, and the right to an advocate.

A pretrial investigation must be carried out objectively, in a qualified manner, impartially, and comprehensively and such amount of information must be collected during this investigation that would be sufficient in order to decide a criminal case in a court in a fair manner.

A pretrial investigation may not be such that its deficiencies would hinder a court in its efforts to justly decide the issue of the guilt of a person in committing a criminal act. The legislature, while paying regard to the Constitution, must establish such a legal regulation whereby, in cases where a pretrial investigation is performed in a non-qualified manner, not comprehensively, or has other faults, it would be possible to carry out a pretrial investigation (or its separate actions) repeatedly.

It needs to be especially emphasised that decisions adopted during a pretrial investigation must be clear and based on legal arguments. The clarity of these decisions and the substantiation of such decisions with

legal arguments is an important guarantee of the constitutional rights and freedoms of a person, *inter alia*, the right to fair legal proceedings, as well as the right to judicial protection.

Under the Constitution, it is impermissible to establish any such a legal regulation that would preclude the possibility of filing a complaint with a court against decisions adopted during a pretrial investigation.

… in itself, the constitutional consolidation of the … general model of criminal procedure does not remove the possibility of regulating criminal procedure relationships in such a manner that, in certain cases (especially when account is taken of the nature, dangerousness (gravity), scale, other features of criminal acts, as well as other important circumstances), a pretrial investigation is not conducted. However, the legislature, when consolidating such a legal regulation whereby a pretrial investigation is not conducted when criminal cases of individual categories are investigated may not create any legal preconditions for burdening the administration of justice or for violating the interests of a person and society from the aspect that the right of a person and of all society, which arises from the Constitution, to security from criminal attempts is denied. In such a case, the legislature is under the duty to provide for other legal measures ensuring the possibility of collecting all information necessary in order to adopt a just court decision. … the legislature, while regulating criminal procedure relationships, under the Constitution, is not permitted to consolidate any such a legal regulation that would prevent carrying out a pretrial investigation or separate procedural actions in order to establish the person who is suspected of committing a criminal act or the circumstances of committing such an act if it is impossible to achieve this without carrying out a pretrial investigation or performing certain procedural actions. Otherwise, the imperatives of the protection of a person and all society from criminal attempts and the right of a person to the due process of law, which arise from the constitutional principle of a state under the rule of law, would be disregarded.

Under the Constitution, a pretrial investigation is organised and directed by prosecutors.

The function of prosecutors to organise and direct a pretrial investigation (Paragraph 1 of Article 118 (wording of 20 March 2003) of the Constitution)

The Constitutional Court's ruling of 16 January 2006

Under the Constitution, no one else but prosecutors may organise and direct a pretrial investigation (ruling of 13 May 2004). The provision of Paragraph 1 of Article 118 of the Constitution, whereby a pretrial investigation is organised and directed by prosecutors, obliges the legislature to establish the powers of prosecutors in organising and directing a pretrial investigation. While regulating this, the legislature has rather broad discretion: taking account of the nature, dangerousness (gravity), scale, and other features of criminal acts, as well as of other important circumstances, the legislature may establish various forms of the organisation and direction of a pretrial investigation, certain powers of prosecutors in this procedure, etc. However, in this case, the legislature is bound by the norms and principles of the Constitution, *inter alia*, by the obligation, stemming from the Constitution, to ensure the security of each person and all society against criminal attempts. The said provision of Paragraph 1 of Article 118 of the Constitution gives rise to the duty of prosecutors to organise and direct a pretrial investigation in such a manner that objective and comprehensive information would be collected about a criminal act and a person who is suspected of committing this act, which, *inter alia*, would create the legal preconditions for a court to establish the objective truth in a criminal case and adopt a just decision concerning the guilt of a person accused of committing a criminal act.

The function of prosecutors to uphold charges on behalf of the state in criminal cases (Paragraph 1 of Article 118 (wording of 20 March 2003) of the Constitution)

The Constitutional Court's ruling of 16 January 2006

Under the Constitution, no one else but prosecutors may uphold charges on behalf of the state in criminal cases (ruling of 13 May 2004). … the provision of Paragraph 1 of Article 118 of the Constitution, whereby prosecutors uphold charges on behalf of the state in criminal cases, *inter alia*, means that, in the course of criminal procedure, charges on behalf of the state are upheld in a court and that upholding criminal charges

on behalf of the state is a function of the state that can be implemented only through certain officials – prosecutors. However, the said provision of the Constitution does not prevent the legislature, when it takes account of whose interests have been violated, of the nature, dangerousness (gravity), scale, and other features of criminal acts, the will of a victim, as well as of other circumstances of importance, etc., from establishing such a legal regulation whereby, in certain cases provided for by means of a law, charges on behalf of the state are not upheld during the consideration of the case in a court. However, every case where it is stipulated that charges on behalf of the state are not upheld must be constitutionally justifiable, *inter alia*, no preconditions may be created that would unreasonably burden the implementation of the constitutional rights and freedoms of a person or deny them altogether. Thus, under the Constitution, the legislature may establish such a legal regulation whereby private persons (their representatives), but not prosecutors, uphold charges in certain criminal cases; in itself, such a legal regulation does not create any preconditions for violating the rights of a person to judicial protection. However, there may not be any such legal situations in which a prosecutor would not have the duty to uphold charges on behalf of the state in cases where private persons (their representatives), when upholding charges in a criminal case, are not able to efficiently defend their rights and legitimate interests (or those of the persons they are representing).

The independence of prosecutors

The Constitutional Court's ruling of 16 January 2006

The Constitutional Court has noted that the independence of prosecutors in organising a pretrial investigation and being in charge of it, as well as in upholding charges on behalf of the state in criminal cases, is a constitutional value; under the Constitution, it is not permitted to establish any such a legal regulation whereby this constitutional value would be denied or the independence of prosecutors would otherwise be restricted when they organise a pretrial investigation and direct it and when they uphold charges on behalf of the state in criminal cases (ruling of 13 May 2004). However, the independence of prosecutors, as consolidated in the Constitution, may not be interpreted as meaning that, during criminal proceedings, prosecutors are not obliged to follow laws and/or the instructions of a court (judge).

The function of prosecutors to defend the rights and legitimate interests of the person, society, and the state (Paragraph 2 of Article 118 (wording of 20 March 2003) of the Constitution)

The Constitutional Court's ruling of 16 January 2006

… the provision of Paragraph 2 of Article 118 of the Constitution, under which, in cases established by law, prosecutors defend the rights and legitimate interests of the person, society, and the state, gives rise to the duty of the legislature to establish such situations where prosecutors must defend the rights and legitimate interests of persons, society, and the state. Also, such legal situations are possible where the rights and legitimate interests of persons, society, and the state are defended without the participation of a prosecutor. However, under the Constitution, there may not be any such legal situations where a person whose rights and legitimate interests have been or are violated, as well as if attempts are made to violate them, would not be able to defend his/her rights in courts, or with the assistance of prosecutors, or by means of any other legal instruments. Thus, the Constitution, *inter alia*, Paragraph 2 of Article 118 thereof, implies the duty of the legislature to establish such a legal regulation whereby, in all cases where the rights or legitimate interests of persons, society, or the state are violated, or where attempts are made to violate them, the efficient defence and protection of such rights and legitimate interests, *inter alia*, against criminal attempts, would be ensured.

… the provisions of Paragraphs 1 and 2 of Article 118 of the Constitution imply that a prosecutor, when defending the rights and legitimate interests of persons, society, and the state, must organise a pretrial investigation and direct it, as well as uphold charges on behalf of the state in criminal cases. Under the Constitution, the legislature has the duty to establish, by means of a law, such a legal regulation whereby prosecutors and the prosecution service of the Republic of Lithuania would be able to efficiently implement this constitutional obligation.

The prohibition precluding prosecutors from participating in the activity of political parties (Paragraph 3 of Article 118 (wording of 20 March 2003) of the Constitution)

The Constitutional Court's ruling of 14 April 2006

… the provision of Paragraph 3 of Article 118 of the Constitution, according to which, when performing their functions, prosecutors are independent and obey only the law, also implies the prohibition precluding prosecutors from being members of political parties and political organisations and from participating in their activities …

The independence of prosecutors (Paragraph 3 of Article 118 (wording of 20 March 2003) of the Constitution)

The Constitutional Court's decision of 16 January 2014

… Paragraph 3 of Article 118 (wording of 20 March 2003) of the Constitution consolidates *expressis verbis* the principle of the independence of prosecutors. Under the Constitution, prosecutors, when performing their functions, are independent and obey only the law. Consequently, prosecutors, while performing their functions, act independently and the institutions of legislative power and executive power, *inter alia*, the Seimas and the President of the Republic, who participate in the process of appointing and releasing the Prosecutor General, may not interfere with the performance of the functions of prosecutors, give prosecutors any obligatory instructions as to the performance of their functions, or control the work of prosecutors while they are performing their functions.

[…]

Thus, under the Constitution, it is not permitted to establish any such a legal regulation that would deny or restrict the independence of prosecutors in organising and directing a pretrial investigation, in upholding charges on behalf of the state in criminal cases, or in defending the rights and legitimate interests of persons, society, and the state.

[…]

Consequently, under the Constitution, the Seimas is not permitted to establish any such a legal regulation that would oblige prosecutors to submit the accounts of the performance of their constitutional functions to legislative power or executive power, *inter alia*, any such a legal regulation that would oblige the Prosecutor General to submit the said accounts of the activity of the prosecution service of the Republic of Lithuania, which would subsequently need to be approved by the Seimas, the President of the Republic, or the Government. The establishment of the aforesaid duty would mean interference with the activities of prosecutors, who perform the functions provided for in the Constitution, and the restriction of the independence of prosecutors in performing the functions provided for in the Constitution.

… the constitutional requirement that the power of the State of Lithuania should be organised in a democratic way and that the democratic political regime must be in place in the country is inseparable from the provision of Paragraph 3 of Article 5 of the Constitution, whereby state institutions serve the people, as well as from the provision of Paragraph 2 of the same article, whereby the scope of powers is limited by the Constitution.

The principle of the balance of the values consolidated in the Constitution and the duty of the legislature to reconcile different interests and to ensure the balance of constitutional values oblige the legislature to bring the constitutional provision that state institutions serve the people in line with the constitutional principle of the independence of prosecutors. Bringing in line these constitutional values would be ensured if the Prosecutor General were obliged, by means of a law, to submit to society, as well as the Seimas and the President of the Republic, who participate in the process of the appointment and release of the Prosecutor General, information (public reports) about the implementation of the priorities of the penal policy, the defence of the public interest, the organisation of the work of the prosecution service, the directions of the activity of the prosecution service, the organisation of cooperation between the Lithuanian and foreign establishments of pretrial investigation or other institutions, time limits for the investigation of criminal acts, certain problems arising in the course of the work of the prosecution service, etc.

The independence of prosecutors; submitting information about the activity of the prosecution service to the Seimas (Paragraph 3 of Article 118 (wording of 20 March 2003) of the Constitution)

The Constitutional Court's ruling of 30 December 2015

… under the Constitution, when implementing the possibility implied by the Constitution to regulate, by means of a law, the regular obtaining of information from a state institution (except for courts), *inter alia*, in the form of reports, which is significant for the implementation of its functions, the Seimas may establish that the Prosecutor General regularly, under the general procedure, submits information on the activity of the prosecution service, *inter alia*, an annual activity report, to the Seimas; however, it may not establish such a legal regulation under which the Prosecutor General would be obliged to provide the Seimas or the President of the Republic with information not on the summarised aspects of the activity of the prosecution service as a whole, but specifically on the fact how prosecutors of the Office of the Prosecutor General and those of territorial prosecutor's offices implement their constitutional functions.

[…]

Thus, in general, the Constitution permits accounting by the Prosecutor General … for the activity of the prosecution service, *inter alia*, to the Seimas (which participates in the procedure of the appointment and release of the Prosecutor General); the Constitution also permits such a form of accounting to the Seimas as the annual activity report (its submission) of the prosecution service. However, the implementation (application) of such … accounting and submission of the annual activity report of the prosecution service … may not create any preconditions for violating the principle of the independence of prosecutors, which is consolidated in Paragraph 3 of Article 118 (wording of 20 March 2003) of the Constitution.

Releasing the Prosecutor General from his/her duties (Item 11 (wording of 20 March 2003) of Article 84 and Paragraphs 5 and 6 of Article 118 (wording of 20 March 2003) of the Constitution)

The Constitutional Court's ruling of 30 December 2015

Paragraph 5 of Article 118 (wording of 20 March 2003) of the Constitution prescribes that the Prosecutor General is appointed and released by the President of the Republic upon the assent of the Seimas, whereas Paragraph 6 thereof provides that the procedure for the appointment and release of prosecutors, as well as their status, is established by law. In addition, Article 84 of the Constitution provides, *inter alia*, that the President of the Republic "shall, upon the assent of the Seimas, appoint and release the Prosecutor General of the Republic of Lithuania" (Item 11 (wording of 20 March 2003)).

The Constitutional Court has held that the legislature, while implementing its constitutional powers to establish the entities who appoint and release prosecutors, also to establish the length of the term of the powers of prosecutors, the procedure for their appointment and release from duties, and the grounds for their release from duties, is bound by the Constitution and, thus, also by the principle of a state under the rule of law consolidated therein, which implies legal certainty, stability, and the protection of legitimate expectations; after having established the term of the powers of the Prosecutor General, the legislature does not have the right to provide for any grounds for the release of the Prosecutor General from his/her duties before the expiry of the term of the powers of the Prosecutor General; under the Constitution, the legislature may establish only such grounds for the release of the Prosecutor General from his/her duties before the expiry of his/her powers due to which the Prosecutor General may not hold his/her office on the whole (e.g. due to such legal facts as the age provided for in the law, transference to another place of work, or the loss of citizenship of the Republic of Lithuania) (ruling of 24 January 2003).

It should be noted that, in the aforementioned Constitutional Court's decision of 16 January 2014, the Constitutional Court also interpreted the provisions of the Constitutional Court's rulings of 30 March 2000 and 24 January 2003 linked with the legal regulation of the release of prosecutors from their duties.

In its decision of 16 January 2014, the Constitutional Court noted the following:

– Paragraph 6 of Article 118 (wording of 20 March 2003) of the Constitution stipulates that the procedure for the appointment and release of prosecutors and their status are established by means of a law; consequently, under the Constitution, the procedure for the appointment and release of the Prosecutor General may be established exclusively in a law;

– Paragraph 5 of Article 118 (wording of 20 March 2003) of the Constitution provides that the Prosecutor General is appointed and released by the President of the Republic upon the assent of the Seimas; the law establishing the procedure for the appointment and release of the Prosecutor General must provide that the sole subject appointing and releasing the Prosecutor General is the President of the Republic, who may act so upon the assent of the Seimas;

– under Article 76 of the Constitution, the Seimas itself has the right to establish its structure and the procedure for its work; the Seimas, while referring to the Constitution, has the right to decide by itself the questions of the formation of its structural subunits and those of their competence and organisation of their work; no other state institution may interfere with these constitutional powers of the Seimas; consequently, the Statute of the Seimas must establish the procedure under which the Seimas decides on whether or not to give its assent to the proposal of the President of the Republic to appoint or release the Prosecutor General; when establishing, in the Statute of the Seimas, under what procedure the Seimas gives or does not give its assent to the proposal of the President of the Republic to appoint or release the Prosecutor General, the Seimas may not provide for any grounds for the release of the Prosecutor General from duties, since, as mentioned before, the grounds for the release of the Prosecutor General from duties may be established exclusively in a law;

– the Prosecutor General is not an official appointed or elected by the Seimas; the Prosecutor General is appointed to office and released from duties by the President of the Republic upon the assent of the Seimas; consequently, the procedure for dismissing an official upon a motion of no confidence, which is provided for in Article 75 of the Constitution and is related to the assessment of the activity of the official concerned, may not be applied to the Prosecutor General.

In its decision of 16 January 2014, the Constitutional Court [interpreted] that … the grounds and procedure for the release of the Prosecutor General from duties must be established exclusively in a law; the Statute of the Seimas may establish, *inter alia*, the procedure under which the Seimas adopts a decision on whether or not to give its assent to the proposal of the President of the Republic to appoint or release the Prosecutor General.

[…]

… under the constitutional principle of the independence of prosecutors in performing the functions provided for in the Constitution, which is prescribed in the Constitution, *inter alia*, Paragraph 3 of Article 118 (wording of 20 March 2003) thereof, the legislature is prohibited from establishing such a legal regulation of accounting by the Prosecutor General (*inter alia*, the submission of the annual activity report of the prosecution service) to the Seimas under which a resolution of the Seimas on refusing to approve an annual activity report of the prosecution service would constitute a ground for the Seimas to decide to put forward the proposal to dismiss the Prosecutor General.

At the same time, it should be noted that, in general, under the Constitution, such a legal regulation is possible under which the Seimas, which participates in appointing and releasing the Prosecutor General, could propose that the President of the Republic release the Prosecutor General from his/her duties on the grounds provided for in a law.