A. The rule of law and constitutional justice in the modern world

I. The different concepts of the rule of law

1. What are the relevant sources of law (e.g. the Constitution, case-law, etc.) which establish the principle of the rule of law in the legal system of your country?

The most important provision in this respect is enshrined in the Preamble to the Constitution of the Republic of Lithuania (hereinafter referred to as the Constitution). This provision refers to the striving of the Lithuanian Nation "for an open, just, and harmonious civil society and a State under the rule of law".[1] The official constitutional doctrine formulated by the Constitutional Court of the Republic of Lithuania (hereinafter referred to as the Constitutional Court) leaves no doubt that, when interpreting the Constitution, the Constitutional Court considers that all the text of the Constitution without exception, all the norms and principles of the Constitution, as well as its Preamble, have equal legal force. The legal scientific doctrine also emphasises that the Preamble to the Constitution has a normative nature. In the rulings of the Constitutional Court, the provisions of the Preamble are often regarded as an imperative that is an important argument in deciding whether an impugned law or another legal act is in conflict with the Constitution.[2]

At the same time, it is pertinent to note that, as emphasised by the Constitutional Court, the constitutional principle of a state under the rule of law may not be interpreted as entrenched only in the Preamble to the Constitution.[3] The Constitution is an integral act; thus, the content of the principle of a state under the rule of law is apparent in various provisions of the Constitution and should be interpreted inseparably from the striving for an open, just, and harmonious civil society.[4]

Neither the Constitution nor the jurisprudence of the Constitutional Court provides for the definition of this principle. Instead, the content of this principle is revealed in the jurisprudence of the Constitutional Court by identifying elements of this principle or particular requirements stemming from this principle ("it is the function of the constitutional doctrine to reveal the content of the concept of a state under the rule of law"[5]). For more on the constitutional principle of a state

---

[1] The Constitution of the Republic of Lithuania, Official Gazette *Valstybės žinios*, 1992, No 33-1014; 1996, No 64-1501; 1996, No 122-2863; 2002, No 65-2629; 2003, No 14-540; 2003, No 32-1315; 2003, No 32-1316; 2004, No 111-1423; 2004, No 111-4124; 2006, No 48-1701.

[2] Sinkevičius, V., "Konstitucijos interpretavimo principai ir ribos" ["The Principles and Limits of Interpretation of the Constitution"], *Jurisprudencija*, 2005, Vol. 67(59), p. 9.

[3] The Constitutional Court's rulings, *inter alia*, of 13 December 2004, 13 August 2007, and 24 December 2008.

[4] The Constitutional Court's ruling of 25 November 2002.

[5] The Constitutional Court's rulings, *inter alia*, of 11 May 1999 and 13 December 2004.

under the rule of law as revealed in the jurisprudence of the Constitutional Court, see the answer to question no 4.

The principle of "the rule of law" or "a state under the rule of law" is referred to in some legal acts.[6] However, explicit references to this principle are rather rare. Some laws contain references to the principle of "the supremacy of a law". For example, the Law on Public Administration provides that public administration entities are guided in their activities by, among other things, the principle of the supremacy of a law. This principle is defined as meaning that "the powers of public administration entities must be stipulated in legal acts and that their activities must comply with the legal grounds laid down in this Law. Administrative acts related to the implementation of the rights and duties of persons must in all cases be based on laws".[7]

However, from the viewpoint of constitutional law, it is not the Constitution that must be interpreted on the grounds of laws, but it is laws that must be interpreted on the grounds of the Constitution. Only if doing so, it is possible to assess laws from the perspective of the Constitution as the apex of the legal system. The Constitutional Court has *expressis verbis* held that the norms and principles of the Constitution may not be interpreted on the grounds of the acts adopted by the legislature or other law-making subjects; otherwise the supremacy of the Constitution in the legal system would be denied.[8]

The interpretation of the Constitution, even though not mentioned *expressis verbis* in the Constitution, is an immanent function of constitutional review. All law-making and law-applying subjects must respect the official constitutional doctrine when they apply the Constitution, and they may not interpret the provisions of the Constitution in a way that is different from the interpretation provided in the acts of the Constitutional Court; acting otherwise would violate the constitutional principle that only the Constitutional Court enjoys the powers to officially interpret the Constitution, would involve disregard for the supremacy of the Constitution, and would create the preconditions for the occurrence of inconsistencies in the legal system.[9]

As specified in the Lithuanian legal scientific doctrine, the Constitutional Court has made a significant contribution through its activity to the creation of a new paradigm of constitutional law, according to which constitutional law has only two sources: the Constitution "in the narrow sense"

[6] For example, in the Code of Administrative Offences (taking effect as from 1 January 2017), the rule of law is established as one of the principles providing the grounds for the imposition of administrative penalties and administrative enforcement measures.

[7] Article 4 of the Law on the Special Investigation Service of the Republic of Lithuania enumerates the principle of the supremacy of a law as one of the principles on which the activities of the Special Investigations Service are based (Official Gazette *Valstybės žinios*, 2000, No 41-1162).

[8] *Inter alia*, the Constitutional Court's ruling of 12 July 2001 and its decision of 23 February 2011.

[9] *Inter alia*, the Constitutional Court's decision of 20 September 2005 and its ruling of 5 September 2012.

(i.e. the "initial" constitutional document with subsequent amendments) and the acts of the Constitutional Court in which the provisions of the Constitution are interpreted.[10]

Under the Constitution, only the Constitutional Court has the powers to interpret the Constitution. The Constitutional Court reveals new aspects of a particular legal regulation established in the Constitution where such aspects are necessary for the consideration of a concrete constitutional justice case; in this way, the Constitutional Court further develops the concept of constitutional provisions that was presented in its previous rulings and other acts. Thus, while investigating constitutional justice cases, the Constitutional Court reveals the content of the constitutional principle of a state under the rule of law and identifies those new aspects of this principle that are necessary for the consideration of a concrete constitutional justice case.

2. How is the principle of the rule of law interpreted in your country? Are there different concepts of the rule of law: formal, substantive or other?

The representatives of the legal scientific doctrine express a broad variety of views regarding the principle of a state under the rule of law. Thus, this principle constitutes a phenomenon that assumes multiple meanings; it encapsulates a certain ideal purely in the form of discussions and guides particular intertwined directions. Before outlining the content of the principle of a state under the rule of law as it is revealed in the jurisprudence of the Constitutional Court, it is necessary to point to a certain difference between the concepts "a state under the rule of law" (or "a law-governed state", *Rechtsstaat*) and "the rule of law". These concepts are not identical: a state under the rule of law is considered the minimum of the rule of law. In this case, two concepts of the rule of law are meant: (i) that typical of continental Europe (and the countries that have taken over the logic and culture of continental law) and (ii) that characteristic of Anglo-Saxon countries (and the countries that have taken over common law experience). The first implies that the sovereign, albeit bound by law, is, nonetheless, not constrained to the extent precluding him from changing the fundamentals of the law, as long as that law has not been changed; the second means that not even the sovereign is allowed to make whatever interventions in the law in force, because some rights of individuals are considered inalienable or, otherwise stated, these rights override the will of the sovereign even where the sovereign is the nation and the will of this

[10] Kūris, E., "Europos Sąjungos teisė Lietuvos Respublikos Konstitucinio Teismo jurisprudencijoje: sambūvio algoritmo paieškos" ["The EU Law in the Jurisprudence of the Constitutional Court of the Republic of Lithuania: Search for the Algorithm of Coexistence"], *Teisė besikeičiančioje Europoje: Liber Amicorum Pranas Kūris [Law in the Changing Europe: Liber Amicorum Pranas Kūris]*, managing editor Katuoka, S., Vilnius: Mykolas Romeris University Publishing Centre, 2008, p. 677.

sovereign reflects the general consensus.[11] The second concept is apparently broader than the first one. Nowadays the continental concept of *Rechtsstaat* has become so approximated to the Anglo-Saxon concept of the rule of law that today the difference between the rule of law and *Rechtsstaat* is only a matter of terminology.[12] The bridging between these formerly competing concepts was considerably facilitated by the spread of constitutionalism and, in particular, by the development of constitutional review in the countries of continental Europe.

Scholars, lawyers, politicians, or observers may have various opinions and interpretations regarding the constitutional principle of a state under the rule of law; however, such interpretations will be binding neither on the Constitutional Court nor on any other subject of legal relationships. Meanwhile, what is stated by the Constitutional Court changes the situation essentially and is compulsory for all subjects of legal relationships.

The above-mentioned tendency towards the proximity of the continental concept of *Rechtsstaat* to the Anglo-Saxon concept of the rule of law is also apparent in the official constitutional doctrine developed by the Constitutional Court. The official constitutional doctrine states that **the essence of the constitutional principle of a state under the rule of law is the rule of law**. The constitutional imperative of the rule of law means that the discretion of state power is limited by law; law must be obeyed by all subjects of legal relationships, including law-making subjects. Notably, the discretion of law-making subjects is limited by supreme law – the Constitution. All legal acts and decisions of all state and municipal institutions and officials must comply with and not contradict the Constitution.[13] Thus, in the Lithuanian Constitution and official constitutional doctrine, the term "a state under the rule of law" is used to express the idea of the rule of law. This term will also be used in providing answers to the questions of this Questionnaire.

The variety of the concepts of the rule of law in the legal scientific doctrine is also classified in terms of other aspects, e.g. such as formal, substantive, or functional. In terms of the formal aspect, this principle is understood as consolidating certain formal requirements for the system of law and is viewed as distanced from value-based (moral) requirements. When the principle of the rule of law is assessed in the context of the substantive aspect, formal requirements are considered together with certain value-based aspects, which may vary (from human rights to the universally recognised legal principles). In terms of the functional aspect, this principle can be treated as a phenomenon operating in dynamic social relationships.

[11] Kūris, E., "Standards of the Rule of Law", in Kūris, E. (scientific editor), *Crisis, the Rule of Law and Human Rights in Lithuania*, Vilnius University, 2015, p. 30.

[12] Ibid, p. 32.

[13] *Inter alia*, the Constitutional Court's rulings of 13 December 2004 and 22 December 2011.

Since the constitutional principle of "a state under the rule of law" is a universal principle on which the whole Lithuanian legal system and the Constitution of the Republic of Lithuania itself are based,[14] it is especially broad and encompasses various interrelated imperatives.[15] As mentioned before, the content of this principle is revealed in the jurisprudence of the Constitutional Court by identifying elements of this principle or particular requirements stemming from this principle. Most of these requirements are set out in the answer to question no 4. These requirements make it clear that the Constitutional Court draws not on the formal concept of the rule of law (a state under the rule of law), but on the substantive concept, encompassing, *inter alia*, the protection of human rights and freedoms (the Constitutional Court has held in its rulings more than once that one of the essential features of a state under the rule of law is the protection of the rights and freedoms of individuals).[16]

In the jurisprudence of the Constitutional Court, the constitutional principle of a state under the rule of law is one of the major guidelines for interpreting the provisions of the Constitution. In principle, it is not only possible but it is also necessary to view any constitutional norm or constitutional principle through the prism of the idea of a state under the rule of law.[17] The principle of a state under the rule of law ensures that the dynamics and interpretation of the Constitution is harmonious: no provision may be developed in the doctrine in the direction that is different from – or opposite to – a state under the rule of law. Thus, the principle of a state under the rule of law undoubtedly also comprises the functional aspect, which is related to the existing typology of constitutional principles classified in terms of the extent to which they guide the system of law. In this respect, constitutional principles are characterised as either determining or coordinating. The principle of a state under the rule of law, along with the principle of the supremacy of the Constitution and the principle of the integrity of the Constitution, should definitely be considered a coordinating principle. Coordinating principles determine whether certain constitutional norms are consistent with other norms and principles entrenched in the Constitution.[18]

3. Are there specific fields of law in which your Court ensures respect for the rule of law (e.g. criminal, electoral law, etc.)?

[14] The Constitutional Court's ruling of 13 December 2004.
[15] Ibid.
[16] The Constitutional Court's rulings, *inter alia*, of 11 May 1999 and 27 April 2016.
[17] Kūris, E., "Lietuvos Respublikos Konstitucijos principai" ["The Principles of the Constitution of the Republic of Lithuania"], in Birmontienė, T. et al., *Lietuvos konstitucinė teisė [Lithuanian Constitutional Law]*, Vilnius, 2002, p. 253.
[18] Ibid., p. 236.

The Constitutional Court has held that, under the Constitution, the Constitutional Court has the exclusive competence to investigate and decide whether any legal act (part thereof) passed by the Seimas (Parliament), the President of the Republic, or the Government, or any legal act (part thereof) adopted by referendum, is in conflict with any higher-ranking legal act, *inter alia* (and first of all) with the Constitution.[19] The Constitutional Court has also held that, under the Constitution, there may be no such laws or other acts passed by the Seimas, or acts passed by the President of the Republic or the Government, whose compliance with the Constitution could not be examined by the Constitutional Court.[20] Thus, there is not and there may not be any such field whose legislation in terms of its compliance with the Constitution could not be reviewed by the Constitutional Court in cases where the Constitutional Court has the constitutional powers to review it. As mentioned before, the constitutional principle of a state under the rule of law is a universal principle on which the entire legal system of Lithuania and the Constitution itself are based. Thus, it is important that this principle be uniformly observed in all fields of law. The Constitutional Court has ruled on violations of the constitutional principle of a state under the rule of law in various fields of law: taxes,[21] intellectual property,[22] elections,[23] civil[24] and criminal law,[25] etc.

4. Is there case-law on the content of the principle of the rule of law? What are the core elements of this principle according to the case-law? Please provide relevant examples from case-law.

The content of the principle of a state under the rule of law was most exhaustively revealed in the Constitutional Court's ruling of 13 December 2004 concerning state service. In this ruling, the Constitutional Court systematised and further developed its previous case-law by providing a broad non-finite list of the requirements that stem from the principle of a state under the rule of law and must be observed both by law-making and law-applying subjects.

The Constitutional Court emphasised in this ruling that the content of the constitutional principle of a state under the rule of law should be revealed by taking account of various provisions of the Constitution and by assessing all values entrenched, defended, and protected under the Constitution, as well as by taking account of the content of various other constitutional principles as, for instance: the principle of the supremacy of the Constitution, its integrity, and direct

[19] The Constitutional Court's ruling of 28 March 2006.
[20] The Constitutional Court's ruling of 30 December 2003.
[21] The Constitutional Court's ruling of 26 September 2006.
[22] The Constitutional Court's ruling of 6 January 2011.
[23] The Constitutional Court's rulings of 9 November 2010 and 5 September 2012.
[24] The Constitutional Court's ruling of 7 June 2007.
[25] The Constitutional Court's ruling of 18 March 2014.

application; the sovereignty of the Nation; democracy; responsible governance; the limitation of the scope of powers; the principle that state institutions serve the people; the publicity of law; justice (comprising, *inter alia*, natural justice); the separation of powers; civic consciousness; the equality of persons before the law, courts, state institutions, and their officials; respect for and the protection of human rights and freedoms (comprising, *inter alia*, the recognition that human rights and freedoms are innate); the balancing of interests of a person and society; the secularity of the state and its neutrality in world-view matters; the social orientation of the state; social solidarity (combined with the responsibility of everyone for their own fate); and other constitutional principles of no less importance.

In its ruling of 13 December 2004, the Constitutional Court held that the constitutional principle of a state under the rule of law may not be interpreted as consolidated only in the Preamble to the Constitution, nor may it be associated only with the striving, as declared in the Preamble, for "an open, just, and harmonious civil society and a state under the rule of law". As the content of the constitutional principle of a state under the rule of law should be interpreted without denying any provision of the Constitution, so in the same way no provision of the Constitution – no constitutional principle or constitutional norm – may be interpreted in a way that deviates from the requirements of a state under the rule of law, which stem from the Constitution; otherwise the content of the constitutional principle of a state under the rule of law, thus also the constitutional concept of a state under the rule of law, would be distorted or even completely denied. All provisions of the Constitution should be interpreted in the context of the constitutional principle of a state under the rule of law, as well as in the context of the concept of a state under the rule of law, as consolidated in the Constitution.

These provisions of the official constitutional doctrine define the constitutional principle of a state under the rule of law in general terms and offer a certain methodological basis. With regard to specific standards in relation to a state under the rule of law, the Constitutional Court noted that the constitutionally consolidated principle of a state under the rule of law implies, among other requirements, that human rights and freedoms must be ensured; that all institutions exercising state power, other state and municipal institutions, and all officials must act on the basis of law and in compliance with the Constitution and law; that the Constitution is the supreme legal act; and that all legal acts must be in line with the Constitution.

In addition, the Constitutional Court separately identified: (1) the requirements for the legislature and other law-making subjects and (2) the requirements for law-applying subjects. For more on this issue, see the answer to question no 12.

The fundamental requirement of a democratic state under the rule of law is **the principle of the supremacy of the Constitution**; the constitutional principle of a state under the rule of law and the principle of the supremacy of the Constitution are inextricably interrelated. The latter is consolidated in Paragraph 1 of Article 7 of the Constitution, which provides that any law or other act that contradicts the Constitution is invalid. Various aspects of this principle are also entrenched in other articles of the Constitution, *inter alia*, in Paragraph 2 of Article 5, which stipulates that state power is limited by the Constitution, and in Paragraph 1 of Article 6, which provides that the Constitution is an integral and directly applicable act. The principle of the supremacy of the Constitution, *inter alia*, means that the Constitution has the exceptional, highest, place in the hierarchy of legal acts; no legal act may be in conflict with the Constitution; no one is permitted to violate the Constitution; the constitutional order must be protected; the Constitution itself consolidates the mechanism permitting to determine whether legal acts (parts thereof) are in conflict with the Constitution.[26]

In its rulings, the Constitutional Court has developed different aspects of the principle of the supremacy of the Constitution. The principle of the supremacy of the Constitution and the principle of a state under the rule of law serve as guiding contextual principles in interpreting particular constitutional provisions. For example, these principles have had fundamental importance for the development of the official constitutional doctrine concerning the possibility for the rulings of the Constitutional Court to have retroactive effect, leading to the unconstitutionality of consequences following from the application of unconstitutional legal acts.

In its decision of 19 December 2012, the Constitutional Court singled out three situations justifying the retroactive effect of its rulings; these situations are directly linked to the principles of the supremacy of the Constitution and a state under the rule of law. The first exception from the general rule that the legal force of the acts of the Constitutional Court is prospective is directly related to the necessity to safeguard the fundamental constitutional values of the State of Lithuania – its independence, democracy, the republic, and the innate nature of human rights and freedoms. The Constitutional Court held that "the provisions of Paragraph 1 of Article 102[27] and Paragraph 2 of Article 107[28] of the Constitution, as interpreted in the context of the fundamental constitutional

[26] The Constitutional Court's rulings, *inter alia*, of 24 December 2002, 29 October 2003, 5 March 2004, and 20 March 2007.

[27] Article 102(1): "The Constitutional Court shall decide whether the laws and other acts of the Seimas are in conflict with the Constitution, and whether the acts of the President of the Republic and the Government are in conflict with the Constitution or laws."

[28] Article 107(2): "The decisions of the Constitutional Court on the issues assigned to its competence by the Constitution shall be final and not subject to appeal."

values consolidated in Articles 1 and 18 of the Constitution,[29] as well as in the context of the principle of the supremacy of the Constitution and the constitutional imperative of the rule of law, *inter alia*, give rise to the powers of the Constitutional Court […], upon establishing […] that an impugned legal act (part thereof) is not merely in conflict with the Constitution but also, in principle, denies such fundamental constitutional values of the State of Lithuania as independence, democracy, the republic, or the innate nature of human rights and freedoms, to recognise that the consequences of the application of the said legal act (part thereof) are also unconstitutional".[30]

Another possibility of retroactive effect results from the finality of the decisions of the Constitutional Court. According to Paragraph 2 of Article 107 of the Constitution, "the decisions of the Constitutional Court on the issues assigned to its competence by the Constitution shall be final and not subject to appeal". In this respect, the Constitutional Court has held that "the constitutional prohibition on overruling the force of a final act of the Constitutional Court is one of the means of protection consolidated in the Constitution in order to ensure the supremacy of the Constitution and the rule of law". Therefore, if, in disregard for the said prohibition, an analogous legal act were adopted, such an act could not constitute a legal basis for acquiring any legitimate expectations, rights, or legal status. Thus, the Constitutional Court, after finding that a legal act was adopted in violation of the prohibition on overruling the final decisions of the Constitutional Court, may recognise the unconstitutionality of consequences following from the application of such a legal act even though those consequences had appeared before the decision was adopted.

The third exception to the general rule, prescribed in Paragraph 1 of Article 107 of the Constitution, that the force of decisions adopted by the Constitutional Court is prospective is established in Article 110 of the Constitution: a court considering a case may not apply any legal act (part thereof) that was found to have been in conflict with the Constitution by the Constitutional Court in the course of implementing the powers assigned to the Constitutional Court under Paragraph 1 of Article 102 of the Constitution. A different interpretation of the said prohibition, consolidated in Paragraph 1 of Article 110 of the Constitution, on applying legal acts (parts thereof) that are in conflict with the Constitution would deny the principle of the supremacy of the Constitution, laid down in Paragraph 1 of Article 7 of the Constitution, and the constitutional imperative of the rule of law, as well as other aspects of the principle of the supremacy of the Constitution, *inter alia*, the principle of the direct application of the Constitution, as stipulated in Paragraph 1 of Article 6 of the Constitution, the essence of the right of each person to defend

[29] Article 1: "The State of Lithuania shall be an independent democratic republic."
Article 18: "Human rights and freedoms shall be innate."
[30] The Constitutional Court's decision of 19 December 2012.

his/her rights directly by invoking the Constitution, as entrenched in Paragraph 2 of the same article, and the essence of the right of each person to apply to a court in order to defend his/her violated constitutional rights or freedoms, as consolidated in Paragraph 1 of Article 30 of the Constitution.

In its rulings of 24 January 2014 and 11 July 2014, the Constitutional Court developed the doctrine that sets out requirements for the constitutional amendment process and establishes limitations on such constitutional amendment initiatives that would destroy the harmony of the Constitution.

In its ruling of 24 January 2014, adopted in the case concerning **the Law Amending Article 125 of the Constitution**, the Constitutional Court for the first time comprehensively formulated the doctrine on amendments to the Constitution by disclosing the limitations that arise from the Constitution itself with regard to the alteration of the Constitution. The Constitutional Court based its reasoning on the concept of the integrity of the Constitution, which is enshrined in Paragraph 1 of Article 6: "The Constitution shall be an integral […] act" (this provision is one of those consolidating the principle of the supremacy of the Constitution), as well as on the concept of the stability of the Constitution.

The Constitutional Court recalled that the Constitution is supreme law and that it reflects the social contract – the commitment democratically assumed to the present and future generations by all the citizens of the Republic of Lithuania to live in observance of the fundamental rules consolidated in the Constitution and to obey these rules; the Constitution is based on universal and unquestionable values such as the sovereignty of the Nation, democracy, the recognition of and respect for human rights and freedoms, respect for law and the rule of law, the limitation of the scope of powers, the duty of state institutions to serve the people and their responsibility to society, civic consciousness, justice, and the striving for an open, just, and harmonious civil society and a state under the rule of law.

The Constitutional Court also emphasised the importance of the stability and internal harmony of the Constitution. The stability of the Constitution is one of the preconditions for securing the continuity of the state and respect for the constitutional order and law, as well as for ensuring the implementation of the objectives that are declared in the Constitution by the Lithuanian Nation and form the basis of the Constitution itself. The stability of the Constitution constitutes such a property of the Constitution that, in conjunction with other properties (primarily, the special, supreme, legal force of the Constitution), distinguishes the constitutional regulation from the (ordinary) regulation laid down by lower-ranking legal acts. The Constitution is an integral act; therefore, no amendment thereto may create any such new constitutional regulation under which

one provision of the Constitution would deny or contradict another provision of the Constitution, so that it would be impossible to regard these provisions as in harmony; no amendments to the Constitution may violate the harmony of the provisions of the Constitution or the harmony of the values consolidated in these provisions. Consequently, the concept, nature, and purpose of the Constitution, the stability of the Constitution as a constitutional value, and the imperative of harmony among the provisions of the Constitution imply certain substantive and procedural limitations with regard to the alteration of the Constitution.

Substantive limitations on the alteration of the Constitution are the limitations consolidated in the Constitution regarding the adoption of constitutional amendments of certain content. These limitations stem from the overall constitutional regulation. They are designed to defend the universal values upon which the Constitution, as supreme law and as the social contract, and the state, as the common good of the entire society, are based, as well as to protect the harmony of these values and the harmony of the provisions of the Constitution.

The following substantive limitations on the alteration of the Constitution were essentially identified:

(1) The prohibition on denying the constitutional values constituting the foundations of the State of Lithuania (*inter alia*, consolidated in Article 1 of the Constitution). Under the Constitution, constitutional amendments must not deny any of the constitutional values lying at the foundations of the State of Lithuania – the independence of the state, democracy, the republic, and the innate nature of human rights and freedoms (with the exception of cases where Article 1 of the Constitution (as well as Article 1 of the Constitutional Law "On the State of Lithuania", which is a constituent part of the Constitution) would be altered by referendum if not less than 3/4 of the citizens of Lithuania with the electoral right vote in favour thereof).

The relevant constitutional jurisprudence was further developed in the ruling of 11 July 2014, in which the Constitutional Court emphasised that the innate nature of human rights and freedoms, democracy, and the independence of the state are such constitutional values that constitute the foundation of the Constitution, as the social contract, and the foundation of the Nation's common life, which is based on the Constitution, as well as the foundation of the State of Lithuania itself; no one may deny the provisions of the Constitution consolidating these fundamental constitutional values, since doing so would amount to the denial of the essence of the Constitution itself. Therefore, even in cases where the limitations that stem from the Constitution itself with regard to the alteration of the Constitution are observed, it is not permitted to adopt any such amendments to the Constitution that would destroy the innate nature of human rights and freedoms, democracy, or the independence of the state; if the Constitution were interpreted in a

different way, it would be understood as creating the preconditions for destroying the restored "independent State of Lithuania, founded on democratic principles", as proclaimed by the Act of Independence of Lithuania of 16 February 1918.

(2) The prohibition on denying the geopolitical orientation of the State of Lithuania, which is consolidated in the Constitution and implies the European and transatlantic integration pursued by the Republic of Lithuania. The geopolitical orientation of the State of Lithuania means membership of the Republic of Lithuania in the EU and NATO, as well as the necessity to fulfil international obligations related to this membership; such geopolitical orientation of the State of Lithuania is based on the recognised and protected universal constitutional values, which are shared with other European and North American states.

The prohibition on denying the geopolitical orientation (which is expressed in the text of the Constitution both in the negative and positive aspects) implies the following limitations on the alteration of the Constitution:

(2.1) the limitation deriving from the negative aspect of the geopolitical orientation (which implies the prohibition on joining any post-Soviet eastern unions); under the Constitution, no amendments may be made to the Constitution that would deny the provisions of the Constitutional Act "On the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions", with the exception of cases where certain provisions of this constitutional act would be altered by referendum if not less than 3/4 of the citizens of Lithuania with the electoral right vote in favour thereof (i.e. in the same manner as provided for in Article 2 of the Constitutional Law "On the State of Lithuania");

(2.2) the limitation deriving from the positive aspect of the geopolitical orientation (which entails membership of the Republic of Lithuania in the European Union); under the Constitution, as long as the constitutional grounds for membership in the European Union, which are consolidated in Articles 1 and 2 of the Constitutional Act "On Membership of the Republic of Lithuania in the European Union", are not annulled by referendum, it is not permitted to make any such amendments to the Constitution that would deny the obligations of the Republic of Lithuania arising from its membership in the European Union.

(3) The prohibition on denying the constitutional principle of respect for international law. The Constitution does not permit any such amendments to the Constitution that would deny the international obligations of the Republic of Lithuania (including the obligations of the Republic of Lithuania arising from its membership in NATO, which are preconditioned by the geopolitical orientation of the Republic of Lithuania) and, at the same time, the constitutional principle of *pacta sunt servanda*, as long as the said international obligations are not renounced in accordance with the

norms of international law.

(4) The prohibition on denying constitutional provisions that enjoy higher protection (i.e. according to the Constitution, the provisions of Chapter I "The State of Lithuania" of the Constitution, as well as the provisions of Chapter XIV "The Alteration of the Constitution", may be altered only by referendum).[31] The Seimas is not permitted to introduce any such amendments to the Constitution that would deny the provisions of Chapter I "The State of Lithuania" and Chapter XIV "The Alteration of the Constitution" of the Constitution; in addition, it is not permitted to introduce by referendum any such amendments to the Constitution that, without appropriately amending the provisions of Chapter I and Chapter XIV of the Constitution, would lay down a constitutional regulation contradicting the provisions of these chapters of the Constitution.

The Constitutional Court also identified certain procedural limitations on the alteration of the Constitution, i.e. a special procedure that is consolidated in the Constitution with regard to the alteration of the Constitution.

Another prominent ruling related, *inter alia*, to one of the core elements of the rule of law – the supremacy of the Constitution is the ruling of 11 July 2014 on organising and calling referendums.

The Constitutional Court emphasised that the Constitution is the legal foundation for the common life of the Nation as the national community and that it reflects the social contract and the obligation of the national community – the civil Nation – to create and reinforce the state by following the fundamental rules consolidated in the Constitution. Thus, the Constitution equally binds the national community – the civil Nation itself; therefore, the supreme sovereign power of the Nation may be executed directly (by referendum) only in observance of the Constitution. All legal subjects, including law-making subjects, the institutions organising referendums, initiative groups for referendums, and other groups of citizens, are bound by the Constitution, must observe it, and may not violate it. Thus, the principle of the supremacy of the Constitution gives rise to the constitutional imperative not to put to a referendum any such possible decisions that would be non-compliant with the requirements stemming from the Constitution.

The Constitutional Court also noted that the purpose of the provisions of Article 3 of the Constitution, according to which no one may restrict or limit the sovereignty of the Nation or arrogate the sovereign powers belonging to the entire Nation, is to protect the constitutional values referred to in this article (the sovereignty of the Nation, the independence of the State of Lithuania,

[31] As emphasised by the Constitutional Court, the values and principles consolidated in these provisions of the Constitution enjoy higher protection in comparison with those values and principles that can also be amended by the Seimas but are consolidated in other provisions of the Constitution.

its territorial integrity and constitutional order); therefore, these provisions may not be invoked for the purpose of denying the said constitutional values. In addition, the provisions of Article 3 of the Constitution may not be interpreted in such a way that, purportedly, they imply the right of the Nation to disregard the Constitution, which has been adopted by the Nation itself, or the right of any citizen or any group of citizens to equate themselves with the Nation and act on behalf of the Nation while seeking to violate the above-mentioned constitutional values. In view of this, the requirement that the Constitution must be observed when a referendum is called may not be regarded as an additional condition, not provided for in the Constitution.

To summarise, it can be maintained that the most prominent examples from the case-law of the Constitutional Court related to one of the core elements of the rule of law – the supremacy of the Constitution – are, on a large scale, linked to the substantive limitations on the alteration of the Constitution. As it is clear from the constitutional jurisprudence, these limitations have two functions: first, they protect the fundamental values on which the Constitution is based, i.e. the core of the Constitution and the constitutional identity of the state; second, they protect the integrity, or inner unity, of the Constitution. At the same time, both these functions are necessary in order to safeguard the foundations of a state under the rule of law.

In the above-mentioned ruling of 13 December 2004, the Constitutional Court singled out **the protection of legitimate expectations**, **legal certainty**, **and legal security** as elements that are inseparable from the principle of a state under the rule of law. The Constitutional Court held that the principle of legal security is one of the fundamental elements of the constitutionally consolidated principle of a state under the rule of law; the principle of legal security means the obligation of the state to ensure the certainty and stability of a legal regulation, to protect the rights of the subjects of legal relationships, including acquired rights, as well as to respect legitimate interests and legitimate expectations. If the protection of legitimate expectations, legal certainty, and legal security were not ensured, the trust of persons in the state and law would not be secured, either. The state must fulfil its obligations undertaken to a person.

Another important element of the principle of a state under the rule of law is **the right to judicial protection**. The Constitutional Court has held that the constitutional principle of a state under the rule of law and other provisions of the Constitution give rise to the imperative according to which a person who believes that his/her rights or freedoms have been violated has the right to an independent and impartial court, which would resolve the dispute. The right of a person to apply to a court also implies his/her right to the due process of law; the latter right is a necessary condition for the administration of justice. It should be emphasised that the constitutional right of a person to

apply to a court may not be artificially restricted, nor may the implementation of this right be unreasonably burdened.

In the jurisprudence of the Constitutional Court, **the constitutional principle of justice** is similarly regarded as an inextricable element of the principle of a state under the rule of law. The constitutional principle of justice is implemented through ensuring a balance of interests and avoiding contingencies and arbitrariness, the instability of social life, or the confrontation of interests.[32] The Constitutional Court has noted on more than one occasion that justice, as a means of regulating social relationships, is one of the basic objectives of law.[33]

Among the elements of the constitutional principle of a state under the rule of law, the Constitutional Court has also singled out **the constitutional principle of proportionality**.[34] As an element of the principle of a state under the rule of law, the principle of proportionality means that the measures provided for in a law must be in line with the legitimate objectives that are important to society, that these measures must be necessary in order to reach the said objectives, and that these measures must not restrict the rights and freedoms of a person obviously more than necessary in order to reach these objectives.[35] When clarifying the content of the proportionality of legal liability, the Constitutional Court has pointed out that there must be a fair balance (proportionality) between the pursued objective to punish the violators of law and prevent the violations of law, on the one hand, and the measures chosen for reaching this objective, on the other.[36]

As stated in the jurisprudence of the Constitutional Court, neither may the constitutional principle of a state under the rule of law be dissociated from **the principle of the equality of the rights of persons**,[37] which is entrenched in the Constitution, *inter alia*, Article 29 thereof. The Constitutional Court has held that any violation of the constitutional principle of the equality of the rights of persons is, at the same time, a violation of the constitutional principle of a state under the rule of law.[38]

The constitutionally consolidated principle of a state under the rule of law entails **the continuity of jurisprudence**.[39] This means that the preconditions must be created for the development of uniform (consistent, non-contradictory) case-law, based on the provision deriving from, *inter alia*, the principle of a state under the rule of law that similar (analogous) cases must be

[32] *Inter alia*, the Constitutional Court's ruling of 29 November 2010.
[33] *Inter alia*, the Constitutional Court's ruling of 24 December 2008.
[34] *Inter alia*, the Constitutional Court's ruling of 29 December 2004.
[35] *Inter alia*, the Constitutional Court's ruling of 11 December 2009.
[36] *Inter alia*, the Constitutional Court's ruling of 31 January 2011.
[37] *Inter alia*, the Constitutional Court's ruling of 14 April 2006.
[38] *Inter alia*, the Constitutional Court's ruling of 22 December 2014.
[39] *Inter alia*, the Constitutional Court's ruling of 28 March 2006.

adjudicated in a similar manner, i.e. such cases must be solved with regard to the established precedents and may not lead to new precedents that would compete with the existing ones.[40]

In addition, **the principle of the independence of judges and courts** (which is explicitly entrenched in Paragraph 2 of Article 109 of the Constitution)[41] is consistently invoked by the Constitutional Court as "an essential principle of a democratic state under the rule of law and a necessary condition for the protection of human rights and freedoms".[42] The Constitutional Court has formed a broad official constitutional doctrine on the independence of judges and courts, in which the constitutional imperative of the independence of judges and courts is interpreted in the context of the constitutional principle of a state under the rule of law.[43] 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 a law, their procedural independence, the organisational independence and self-governance of courts, as well as the status and social (material) guarantees of judges.[44] The content of particular guarantees has been developed through the interpretation of relevant constitutional provisions. The principle of a state under the rule of law, including its separate elements such as the constitutional principle of proportionality, serves in this respect as a contextual and guiding principle. Thus, a violation of certain guarantees of the independence of judges and courts generally amounts to a violation of the principle of a state under the rule of law. For example, in its ruling of 1 July 2013 on the reduction of the remuneration of state servants and judges, the Constitutional Court stated that "the reduction of the remuneration of judges must not be disproportionate or discriminatory; *inter alia*, remuneration may not be reduced only for judges, or only for the judges of certain courts, or only for the judges performing certain duties; the proportions of the amount of salaries established at the time prior to a particularly difficult economic and financial situation in the state must be secured for judges performing different duties (for the judges of different systems of courts and/or of different levels of courts), as well as the proportions of the amount of remuneration established for the different categories of judges and other persons (*inter alia*, state servants, politicians, and officials) who are paid for their work from the state or municipal budget. Any failure to observe the said requirements should be regarded as an encroachment upon the

[40] *Inter alia*, the Constitutional Court's ruling of 24 October 2007.
[41] Article 109(2): "When administering justice, judges and courts shall be independent."
[42] The Constitutional Court's rulings, *inter alia*, of 12 February 2001 and 22 October 2007.
[43] The Constitutional Court's ruling, *inter alia*, of 22 October 2007.
[44] The Constitutional Court's rulings, *inter alia*, of 21 December 1999 and 22 October 2007 and its decision of 10 March 2014.

independence of judges and courts and, thus, *inter alia*, also as a violation of Paragraph 2 of Article 109 of the Constitution[45] and the constitutional principle of a state under the rule of law".

The Constitutional Court has also held that "**respect for international law** is an inseparable part of the constitutional principle of a state under the rule of law, the essence of which is the rule of law".[46]

5. Has the concept of the rule of law changed over time in case-law in your country? If so, please describe these changes referring to examples.

The unfolding of the constitutional content of a state under the rule of law in the constitutional jurisprudence is a gradual, consistent, and never-ending process. The principle of a state under the rule of law has been analysed in the constitutional jurisprudence virtually since the beginning of the activity of the Constitutional Court. The concept "a state under the rule of law" was for the first time mentioned in the Constitutional Court's ruling of 13 December 1993. In its ruling of 23 February 2000, the Constitutional Court for the first time held that the constitutional principle of a state under the rule of law is a universal principle on which the whole Lithuanian legal system and the Constitution of the Republic of Lithuania itself are based, as well as that the content of the principle of a state under the rule of law is apparent in various provisions of the Constitution. In the Constitutional Court's ruling of 13 December 2004, it was for the first time *expressis verbis* stated that the essence of the constitutional principle of a state under the rule of law is the rule of law.

Different requirements stemming from this principle (or elements of this principle) have been developed in various acts of the Constitutional Court. These requirements were given a particularly broad consideration in the Constitutional Court's ruling of 13 December 2004, as well as in other rulings, which were discussed in more detail in the answer to question no 4. However, the list of particular requirements stemming from the principle of a state under the rule of law is not viewed as exhaustive: i.e. the content of the principle of a state under the rule of law has not been conclusively defined and new aspects of this principle continue to be revealed in the official constitutional doctrine.

The unfolding of new aspects should not be perceived as a "change", but rather as a result of the continuing development of the official constitutional doctrine on the principle of a state under the rule of law. There have been no changes in terms of the correction of the official constitutional doctrine concerning this principle. When interpreting the constitutional principle of a state under the

[45] Article 109(2): "When administering justice, judges and courts shall be independent".
[46] The Constitutional Court's rulings of 24 January 2014 and 18 March 2014 and its decision of 16 May 2016.

rule of law and revealing the content of the concept of a state under the rule of law, as enshrined in the Constitution, the Constitutional Court forms the official constitutional doctrine on the principle of a state under the rule of law and further develops it by interpreting those new aspects of the legal regulation established in the Constitution that are necessary for the investigation of a particular constitutional justice case.[47]

6. Does international law have an impact on the interpretation of the principle of the rule of law in your country?

According to the official constitutional doctrine, "the observance of voluntarily undertaken international obligations and respect for the universally recognised principles of international law (including the principle of *pacta sunt servanda*) are a legal tradition and a constitutional principle of the restored independent State of Lithuania […] respect for international law is an inseparable part of the constitutional principle of a state under the rule of law, the essence of which is the rule of law".[48]

Respect for international law may be perceived as such an element of the principle of a state under the rule of law that reinforces other elements comprising the content of this principle. In particular, international law is important in ensuring the protection of human rights and fundamental freedoms (which is referred to in the case-law of the Constitutional Court as one of the requirements implied by the principle of a state under the rule of law). It should be mentioned that Paragraph 1 of Article 135 of the Constitution, consolidating the principle of *pacta sunt servanda*, directly refers to international law only in the context of Lithuanian foreign policy: it is stated that, "in implementing its foreign policy, the Republic of Lithuania shall follow the universally recognised principles and norms of international law". However, the Constitution cannot be interpreted only literally, without taking into account the overall constitutional regulation. The Constitutional Court, in its ruling of 9 December 1998 concerning the death penalty, noted that, "recognising the principles and norms of international law, the State of Lithuania may not apply to the people of this country any such standards that, in principle, would be different from international ones; holding that it is an equal member of the international community, the State of Lithuania, of its own free will, adopts and recognises these principles and norms, as well as the customs of the international community, and naturally integrates itself into the world culture and becomes its intrinsic part". Thus, it is possible to draw the conclusion that the constitutional principle of *pacta sunt servanda* gives rise to the

[47] The Constitutional Court's ruling of 13 December 2004.
[48] The Constitutional Court's rulings of 24 January 2014 and 18 March 2014 and its decision of 16 May 2016.

requirement that international law should be regarded as the minimum necessary constitutional standard for national law in the area of human rights.

The reinforcing impact of international law on the elements of the principle of a state under the rule of law can be illustrated by the constitutional justice case concerning criminal liability for genocide. The petitioners – several Lithuanian courts – doubted the constitutionality of the provisions of the Criminal Code providing for criminal liability for genocide directed against persons belonging to social or political groups, i.e. groups not included in the definition of genocide according to the universally recognised norms of international law. According to the Criminal Code, such a broader definition of genocide could be applied retroactively, i.e. to acts committed before the entry into force of the relevant provision defining genocide. In its ruling of 18 March 2014, the Constitutional Court stated that the criminal laws of the Republic of Lithuania that are related to liability for international crimes, including genocide, may not establish any such standards that would be lower than those established under the universally recognised norms of international law. Disregard for the said requirement would be incompatible with the principle of *pacta sunt servanda* and the pursuit for an open, just, and harmonious civil society and a state under the rule of law.

When interpreting the content of the constitutional principle of *nullum crimen, nulla poena sine lege*, the Constitutional Court took into account that the universally recognised norms of international law permit an exception to this principle, by providing for the retroactivity of national laws establishing criminal liability for international crimes, as defined by the universally recognised norms. In addition, the Constitutional Court recalled that, under Article 7 of the European Convention on Human Rights, liability for an act constituting a crime under international law or the general principles of law at the time when it was committed may also be imposed in cases where the act did not constitute a crime under national law valid at the time when the crime was committed. Thus, the exception to the principle of non-retroactivity cannot apply to crimes defined exclusively under national law. Therefore, persons may not be brought to trial for actions committed prior to the entry into force of the broader concept of genocide in cases where such actions do not meet the definition of genocide under international law. At the same time, it is important to mention that this ruling should not be perceived as leading to impunity. The Constitutional Court emphasised that, in cases where the actions committed during the period of the Soviet occupation against particular political or social groups of the Lithuanian population do not meet the definition of genocide under international law, it should be assessed whether such actions can be qualified as crimes against humanity or war crimes.

Based on this reasoning, the provisions of the Criminal Code establishing that a person could be retroactively brought to trial for genocide directed against persons belonging to any social or political group (i.e. groups not covered by the definition of genocide under the universally recognised norms of international law) were ruled to have been in conflict with the Constitution, including the principle of a state under the rule of law.

Thus, this constitutional justice case demonstrates the fundamental impact of international law in reinforcing the requirement of non-retroactivity, which is an important element of the principle of a state under the rule of law.

International law, in particular the law of the European Convention on Human Rights (the Convention, its Protocols, and related case-law of the European Court of Human Rights), has also had a considerable impact on the interpretation of the content of different constitutional rights. For example, Convention law has had a substantial impact on the interpretation of the content of the right to a fair trial, which is regarded as one of the elements of the principle of a state under the rule of law.[49] The interpretation of this constitutional right was developed on the basis of Convention law in such contexts as the independence of courts,[50] the use of conduct simulating criminal activities as a method to investigate crimes,[51] the use of the testimony of anonymous witnesses in a court,[52] the right of persons charged with a criminal offence to have an advocate,[53] the use of classified information as evidence in a court,[54] the application of the requirements of criminal procedure in the consideration of cases concerning administrative violations of law,[55] etc.

In the context of the impact of international law on the concept of the rule of law, it is worth mentioning that respect for international law, which is an inseparable part of the constitutional principle of a state under the rule of law, is closely linked to the official constitutional doctrine concerning the constitutionality of constitutional amendments.

The Constitutional Court formulated this doctrine in its rulings of 24 January 2014 and 11 July 2014. The essence of this doctrine is the notion of substantive limitations on constitutional amendments. Such limitations stem from the overall constitutional regulation and may be either absolute (aimed at protecting "eternal clauses") or relative (conditional). Some of them are directly

[49] According to the jurisprudence of the Constitutional Court, the imperative arises from the constitutional principle of a state under the rule of law and other provisions of the Constitution that a person who believes that his/her rights and freedoms have been violated has an absolute right to an independent and impartial trial; the right to a fair trial is also regarded as a separate element of the rule of law by the Venice Commission.

[50] The Constitutional Court's ruling of 21 December 1999.

[51] The Constitutional Court's ruling of 8 May 2000.

[52] The Constitutional Court's ruling of 19 September 2000.

[53] The Constitutional Court's ruling of 12 February 2001.

[54] The Constitutional Court's ruling of 15 May 2007.

[55] The Constitutional Court's ruling of 28 May 2008.

related to international law. It should be noted in this context that, while deciding a related case, the Constitutional Court took into account, *inter alia*, the provisions of legal acts adopted by the Venice Commission, including the provisions of the Guidelines for Constitutional Referendums at National Level (adopted in 2001).

With respect to the international legal obligations undertaken by the State of Lithuania, the Constitutional Court noted in its ruling of 24 January 2014 that the principle *of pacta sunt servanda* is a legal tradition and a constitutional principle of the restored independent State of Lithuania; in addition, respect for international law is regarded as an inseparable part of the constitutional principle of a state under the rule of law. The Constitutional Court held that the Constitution does not permit any such amendments to the Constitution that would deny the international obligations of the Republic of Lithuania and, at the same time, the constitutional principle of *pacta sunt servanda*, as long as the said international obligations are not renounced in accordance with the norms of international law.

Thus, the doctrine on unconstitutional constitutional amendments not only ensures the highest possible legal protection of democracy and innate human rights, but it also provides for the special protection of the international obligations of the State of Lithuania.

II. New challenges to the rule of law

7. Are there major threats to the rule of law at the national level or have there been such threats in your country (e.g. economic crises)?

Considering that, during the period of the Soviet occupation, the rule of law did not exist, building a democratic state based on the rule of law following the restoration of the independence of Lithuania was a serious challenge. In the transitional period, Lithuania could not avoid facing various problems; thus, the Constitutional Court had to consider constitutional justice cases concerning crime prevention,[56] the constitutional responsibility of state officials,[57] the restoration of citizens' property rights,[58] etc.

The major challenge in the recent years to the principle of a state under the rule of law was posed by the global economic crisis that broke out in 2008. The crisis forced the political authorities to resort to harsh austerity measures (reduce public financing) in all areas, limit the commitments

[56] *Inter alia*, the Constitutional Court's rulings of 8 May 2000 and 29 December 2004.

[57] *Inter alia*, the Constitutional Court's rulings of 30 March 2000 and 15 April 2004; the Constitutional Court's conclusions of 31 March 2004, 27 October 2010, and 3 June 2014.

[58] *Inter alia*, the Constitutional Court's rulings of 27 May 1994, 8 March 1995, 4 March 2003, 22 December 2010, and 8 October 2014.

(in particular, social) that the state had undertaken and had been fulfilling to different groups of society, and, in some areas, increase the obligations of different legal subjects to the state – impose new obligations (such as taxes) and, in this way, at least to some extent, shift the burden of the crisis onto the shoulders of various members of society.[59] As the crisis was unfolding in Lithuania, the law-making initiatives focussing on public spending savings affected various areas of the economic and public life.

At a time of economic downturn, it happens so that the goal of economic stabilisation marginalises certain requirements stemming from the principle of a state under the rule of law, *inter alia*, such as requirements of human rights protection; therefore, during this period, the review carried out by the Constitutional Court over the constitutionality of legal acts adopted by political authorities is particularly important; it does not allow derogations from the requirements of the principle of a state under the rule of law in cases where decisions by other branches of power are based on the reasons of apparently short-sighted and short-term political gains.

In the same way as the constitutional review institutions of some other European states, the Constitutional Court faced the onerous responsibility of assessing the constitutionality of austerity measures applied by political authorities (legal acts and provisions aimed at overcoming the economic crisis). During the period of the economic crisis, *inter alia*, the following issues were dealt with: the reduction of pensions;[60] the reduction of the amount of pension contributions accumulated in pension funds;[61] the procedure for adopting the law on the 2009 state budget and the related laws;[62] the reduction of granted maternity (paternity) benefits;[63] the reduction of the remuneration of state servants and judges;[64] and the reduction of the coefficients of positional salaries of prosecutors and some other state officials.[65]

Certain austerity measures were found by the Constitutional Court to have been in conflict with the Constitution, *inter alia*, with the constitutional principle of a state under the rule of law (e.g. the provisions of legal acts that disproportionately reduced the remuneration of state servants and judges,[66] the coefficients of the salaries of prosecutors and some other state officials;[67] and pensions[68]).

---

[59] Kūris, E. (scientific editor), *Krizė, teisės viešpatavimas ir žmogaus teisės [Crisis, the Rule of Law and Human Rights in Lithuania]*, Vilnius University, 2015, p. 506.

[60] The Constitutional Court's ruling of 6 February 2012.

[61] The Constitutional Court's ruling of 29 June 2012.

[62] The Constitutional Court's ruling of 15 February 2013.

[63] The Constitutional Court's ruling of 16 May 2013.

[64] The Constitutional Court's ruling of 1 July 2013.

[65] The Constitutional Court's ruling of 22 December 2014.

[66] The Constitutional Court's ruling of 1 July 2013.

[67] The Constitutional Court's ruling of 22 December 2014.

[68] The Constitutional Court's ruling of 6 February 2012.

Some of these measures, e.g. the provisions of legal acts on reducing maternity (paternity) benefits,[69] were ruled to have been not in conflict with the Constitution.

The application of certain austerity measures was found to have been justifiable due to a difficult economic and financial situation in the state.

For instance, in its ruling of 15 February 2013, the Constitutional Court noted that Paragraph 1 of Article 69 of the Constitution and the constitutional principle of a state under the rule of law give rise to the requirement that laws and other legal acts must be adopted according to the procedure that is established in advance and is compliant with the Constitution, provided that this procedure is not altered after the process of adopting laws has started; it is allowed to derogate from this requirement only where it is necessary to secure the protection of other, more important, constitutional values. The Constitutional Court held that the provision of the Statute of the Seimas that had extended the term of the beginning of the second consideration of the state budget interfered with the process of the consideration of the state budget that had already started; however, it was recognised that, by adopting the said provision, the legislature had implemented the constitutional requirement to respond to an especially difficult situation caused due to the economic crisis and had created the conditions for a new Seimas to exercise its constitutional powers in considering and approving a draft state budget.

The Constitutional Court pointed out that derogations from the requirements arising from the Constitution with regard to the adoption and entry into force of laws on a state budget and laws related to the revenue and expenditure of a state budget, *inter alia*, derogations from the requirement that any amendments to laws related to the revenue and expenditure of the state must be adopted before the Seimas approves a state budget, as well as derogations from the requirement of a sufficient *vacatio legis,* are constitutionally justifiable with a view to ensuring an important public interest – to guarantee the stability of public finances and prevent an excessive state budget deficit upon the emergence of an especially difficult economic and financial situation in the state due to the economic crisis, since such an interest creates the need for urgent and effective decisions.

The Constitutional Court recognised that the Seimas had adopted the laws related to the Law on the 2009 State Budget in response to the situation that had occurred in the state due to the economic crisis and in an attempt to ensure the important public interest – to guarantee the stability of public finances and prevent an excessive state budget deficit. Thus, even though the Seimas had derogated from the above-mentioned constitutional requirements for the adoption and entry into force of legislation, this derogation was found to have been constitutionally justifiable.

[69] The Constitutional Court's ruling of 16 May 2013.

In its ruling of 29 June 2012, the Constitutional Court held that, having established that part of the funds allocated for old-age pensions was to be transferred to special pension funds in order to accumulate future old-age pensions, in cases of necessity (e.g. in the event of an economic crisis) when the economic and financial situation in the state changed so that the collection of the funds necessary to pay old-age pensions was not ensured from the income of working persons, the legislature had the powers to decide to temporarily reduce that part of the funds collected from the said income that was to be transferred to special pension funds for the accumulation of future old-age pensions.

In the course of considering these constitutional justice cases, the Constitutional Court formed the doctrine on the constitutionality of (austerity) measures aimed at overcoming an economic crisis. This doctrine was developed, *inter alia*, in the light of the requirements stemming from the principle of a state under the rule of law, and it is based on the principled provision that the application of measures aimed at overcoming an economic crisis must be compliant with the requirements deriving from the constitutional principles of a state under the rule of law and justice.

For instance, in the Constitutional Court's decision of 20 April 2010, which comprehensively revealed the doctrine on the constitutionality of measures aimed at overcoming an economic crisis, *inter alia*, it was held that, under the Constitution, *inter alia*, under the constitutional principles of a state under the rule of law and responsible governance, state institutions forming and implementing state economic and financial policies must also assess the fact that special circumstances (an economic crisis etc.) may cause an especially difficult economic and financial situation in the state; therefore, state institutions must take all possible measures in order to predict the tendencies in the economic development of the state and to prepare for possible difficult economic and financial situations. Upon the emergence of an especially difficult economic and financial situation in the state as a result of special circumstances (an economic crisis etc.), decisions to reduce pensions must be adopted in compliance with the requirements stemming from the constitutional principles of a state under the rule of law and justice, such as the requirements to avoid contingencies and arbitrariness, the instability of social life, or the confrontation of interests.

In its ruling of 6 February 2012, the Constitutional Court noted that, upon the occurrence of an extreme situation in the state when, due to an especially difficult economic and financial situation, it is impossible to accumulate the amount of funds necessary to pay pensions, the granted and payable pensions may be subject to reduction; however, in doing so, the legislature is obliged to pay regard to the constitutional principles of the equality of rights and proportionality (which, as mentioned before, are regarded in the constitutional jurisprudence as inseparable from the constitutional principle of a state under the rule of law) and to provide for an equally balanced and

non-discriminatory scale of the reduction of pensions; reduced pensions may be paid only on a temporary basis and a mechanism of compensation for losses incurred as a result of reduced pensions must be provided for.

In its ruling of 1 July 2013, which reviewed the constitutionality of the reduction of the remuneration of state servants and judges, the Constitutional Court clarified the requirements that stem from the provision "Everyone […] shall have the right […] to receive fair pay for work" of Paragraph 1 of Article 48 of the Constitution (interpreted in conjunction with the constitutional principles of a state under the rule of law, the equality of rights, justice, and proportionality) in cases where, due to an especially difficult economic and financial situation in the state, the legislature lays down a legal regulation reducing the remuneration of persons who are paid for their work from the state or municipal budget.

8. Have international events and developments had a repercussion on the interpretation of the rule of law in your country (e.g. migration, terrorism)?

It should be noted that the most evident recent international development that was definitely reflected in the jurisprudence of the Constitutional Court was the global economic crisis, which broke out in Lithuania in 2008 (and has been discussed in more detail in the answer to question no 7). Other international developments (e.g. migration, terrorism) have had no obvious repercussions on the jurisprudence of the Constitutional Court. In this context, however, mention can be made of the ruling of 29 December 2004, in which the Constitutional Court reviewed the constitutionality of some measures (e.g. an injunction not to maintain relations with the persons specifically named or an injunction to be present at the place of residence at the appointed time) aimed at the prevention of organised crime. In this ruling, it was held that the majority of especially dangerous crimes as, for example, **terrorism**, trafficking in people, criminal trade in weapons, drug trafficking, money laundering, financial crimes, and crimes related to corruption, are often committed namely by organised crime groups (criminal organisations). If organised crime were not prevented and organised crime groups (criminal organisations) were not prosecuted, a threat would be posed to the constitutional values, *inter alia*, the rights and freedoms of a person, the constitutionally consolidated legal foundations of the life of society, the state as an organisation of all society, as well as to all society.

The Constitutional Court also noted that organised crime in the modern world often reaches beyond state borders and presents a threat to the international community. If the activity of organised crime groups (criminal organisations) were not persecuted at the time when it is spreading from one country to another, the most important values of the communities of democratic

states and the international community would come under threat. Therefore, modern states establish and apply various measures, both repressive and preventive, for restricting and reducing organised crime. As a democratic state under the rule of law and a member of the international community, Lithuania is also under the duty to establish and apply both repressive and preventive measures, adequate to the threat posed by organised crime.

With regard to these measures, it was noted in the ruling that, in general, it would be misleading to interpret them in such a way that, purportedly, the constitutional recognition of the innate nature of human rights and freedoms, the broad catalogue of innate human rights and freedoms, which is entrenched in the Constitution, or other constitutional institutes do not permit the establishment and application of effective and, if needed, rather strict measures for restricting and reducing organised crime. On the contrary, the duty of the state as an organisation of all society to protect a person and the state from the threat posed by crimes obligates it to establish and to resolutely apply effective measures for restricting and reducing crime, including organised crime.

9. Has your Court dealt with the collisions between national and international legal norms? Have there been cases of different interpretation of a certain right or freedom by your Court compared to regional/international courts (e.g. the African, Inter-American or European Courts) or international bodies (notably, the UN Human Rights Committee)? Are there related difficulties in implementing decisions of such courts/bodies? What is the essence of these difficulties? Please provide examples.

Lithuanian constitutional provisions and the constitutional doctrine generally follow the monist model of relationship between national laws and international treaties. When interpreting the provision "International treaties ratified by the Seimas of the Republic of Lithuania shall be a constituent part of the legal system of the Republic of Lithuania" of Paragraph 3 of Article 138 of the Constitution, the Constitutional Court has held that this provision means that international treaties ratified by the Seimas acquire the force of a law.[70]

However, even though ratified international treaties and laws have comparable legal force, in view of the constitutional tradition of respect for international law as reflected in Paragraph 1 of Article 135 of the Constitution, the Constitutional Court has held that the doctrinal provision under which international treaties ratified by the Seimas acquire the force of a law may not be interpreted as meaning that, purportedly, the Republic of Lithuania may disregard international treaties if its laws or constitutional laws contain a legal regulation that is different from the one established in

[70] The Constitutional Court's conclusion of 24 January 1995 and its ruling of 14 March 2006.

international treaties.[71] According to the interpretation of the Constitutional Court, the Constitution consolidates the principle that, in cases where a national legal act (with the exception of the Constitution itself) establishes a legal regulation that competes with the one established in an international treaty, the international treaty must be applied.[72]

In its decision of 9 May 2016, the Constitutional Court noted that a collision between the provisions of a law and an international treaty is an issue of the application of law and needs to be resolved by taking account of the relevant official constitutional doctrine and the Law on International Treaties. As the matters concerning the application of laws do not fall under the jurisdiction of the Constitutional Court, the Constitutional Court refused to consider the petition in which questions of a collision between the provisions of a law and the European Convention on Human Rights were raised.

The constitution-centric concept of the Lithuanian legal system determines that no law or other legal act, including international treaties of the Republic of Lithuania, may be in conflict with the Constitution. In the ruling of 18 March 2014 concerning criminal liability for genocide, the Constitutional Court held that the incompatibility between an international treaty of the Republic of Lithuania and the provisions of the Constitution must be removed either by renouncing the international obligations established under the international treaty in the manner prescribed by the norms of international law or by making appropriate amendments to the Constitution.

In this context, it is important to mention that the Lithuanian Constitution, both explicitly and implicitly, consolidates the principles that make it possible to minimise the potential tensions between the Constitution and international law. The main principle is that of *pacta sunt servanda*, which is consolidated in Paragraph 1 of Article 135 of the Constitution. This principle is complemented by two other principles implying the integration of the State of Lithuania into the community of democratic states – the principle of an open, just, and harmonious civil society (which implies openness to the values of international community) and the principle of the geopolitical orientation of the state (which is underpinned by the common values shared by Lithuania with western democratic states and entails the membership of Lithuania in the European Union and NATO).

It should be noted that there has been only one, to a certain extent, conflicting situation with regard to the provisions of the Constitution and the provisions of international law, namely the Convention for the Protection of Human Rights and Fundamental Freedoms.

[71] The Constitutional Court's ruling of 14 March 2006.
[72] Ibid.

This particular case is related to the removal of a former President of the Republic of Lithuania, Rolandas Paksas, from office following the impeachment proceedings in 2004. On 25 May 2004,[73] the Constitutional Court, after considering the constitutionality of the amendments to the Law on Presidential Elections,[74] adopted the ruling in which it was held that a person who had grossly violated the Constitution and breached his/her oath and, as a result of this, was removed from office could never again stand in elections for an office requiring a person to take an oath to the State of Lithuania. On 6 January 2011, in the case of *Paksas v Lithuania*, the Grand Chamber of the European Court of Human Rights held that such a permanent disqualification from standing in parliamentary elections was disproportionate and constituted a violation of Article 3 of Protocol No 1 to the Convention (the right to free elections).[75]

Following the judgment in the case of *Paksas v Lithuania*, the Law on Elections to the Seimas was amended so as to allow a person who was removed from office under the impeachment procedure to stand in elections for a member of the Seimas, provided that no less than four years have elapsed from the removal from office. Consequently, a group of members of the Seimas contesting the constitutionality of this provision applied to the Constitutional Court.

In its ruling of 5 September 2012, the Constitutional Court emphasised that, in the course of implementing the international obligations of the Republic of Lithuania in domestic law, it is necessary to take account of the principle of the supremacy of the Constitution, which is consolidated in Paragraph 1 of Article 7 of the Constitution and prescribes that "Any law or other act that contradicts the Constitution shall be invalid". The Constitutional Court noted that this constitutional provision in itself cannot render any law or international treaty invalid, but it requires that the provisions of laws and international treaties be not in conflict with the provisions of the Constitution. With regard to the foregoing, the Constitutional Court concluded that, in cases where a legal regulation consolidated in an international treaty that has been ratified by the Seimas and has entered into force competes with a legal regulation established in the Constitution, the provisions of such an international treaty do not take precedence in terms of application.

Concerning the above-mentioned divergence of the jurisprudence of the two courts, the Constitutional Court held that the judgment of the European Court of Human Rights may not in itself serve as a constitutional basis for the reinterpretation (correction) of the official constitutional doctrine if such reinterpretation, in the absence of appropriate amendments to the Constitution,

[73] The Constitutional Court's ruling of 25 May 2004.

[74] The relevant law had been supplemented, *inter alia*, by including the provision that a person who has been removed from office or whose mandate of a member of the Seimas has been revoked by the Seimas according to the impeachment procedure may not stand for election as the President of the Republic if less than 5 years have elapsed since his/her removal from office or since the revocation of his/her mandate of a member of the Seimas.

[75] The ECtHR, the judgment of 6 January 2011, *Paksas v Lithuania* [GC], no 34932/04.

would substantially change the overall constitutional regulation (in this particular case, the integrity of constitutional institutes of impeachment, the oath, and the electoral right) and would distort the system of the values entrenched in the Constitution or undermine the guarantees for the protection of the supremacy of the Constitution in the legal system.

On the other hand, in the same ruling, the Constitutional Court recognised the existence of a clear interrelationship between the international human rights protection system and the national (constitutional) legal system, the subsidiarity of the international human rights protection system with respect to the Constitution, and the broad discretion (however, limited by the Constitution) of the state to choose the means of implementing the obligations related to international human rights protection. The Constitutional Court emphasised the necessity to harmonise national law in the field of human rights with the respective international obligations of the Republic of Lithuania, even where doing so would require amending the Constitution, so that the principle of its supremacy would not be denied. In the context of this particular case, the Constitutional Court emphasised that the constitutional principle of *pacta sunt servanda* implies the duty of the Republic of Lithuania to remove the incompatibility between the provisions of Article 3 of Protocol No 1 to the Convention and the Constitution, i.e. the duty to adopt appropriate amendment(s) to the Constitution.

III. The law and the state

10. What is the impact of the case-law of your Court on guaranteeing that state powers act within the constitutional limits of their authority?

Under Article 5 of the Constitution, in Lithuania, state power is executed by the Seimas, the President of the Republic and the Government, and the Judiciary. The same article also provides that the scope of power is limited by the Constitution and that state institutions serve the people. The Constitutional Court has noted that the constitutional principle of the separation of powers is consolidated not only in Article 5, but also in other articles of the Constitution, which is an integral act.[76] This principle is fundamental in the organisation and functioning of a democratic state under the rule of law.[77] The Constitutional Court has held on more than one occasion that this principle means that legislative power, executive power, and judicial power must be separated, sufficiently independent, but, at the same time, such branches of power must be balanced. The competence answering their purpose is conferred on every state institution; the concrete content of such competence depends on the form of government of the state, on the place of that institution among

[76] The Constitutional Court's ruling of 26 April 2001.
[77] *Inter alia*, the Constitutional Court's ruling of 24 September 2009.

other state institutions, and on the relationship of its powers with those of other institutions; the said principle also means that, if the Constitution directly establishes particular powers of a certain state institution, no state institution can take over such powers from another institution, or transfer or waive them; such powers may not be changed or limited by law.[78]

The constitutional justice model of Lithuania does not provide for the special area of jurisdiction – deciding disputes on competence between state institutions, which is envisaged in the constitutions of some countries. In Lithuania, such disputes are decided indirectly, i.e. the Constitutional Court decides disputes related to the powers of and interrelations among the Seimas, the President of the Republic, the Government, and courts when assessing whether laws and other acts of the Seimas are in conflict with the Constitution (where the provisions of impugned acts are related to the powers and functions of, as well as the interaction among, state institutions); such disputes are also decided when the Constitutional Court assesses whether acts adopted by the President of the Republic or the Government are in conflict with the Constitution (where this is related to the powers and functions of, as well as the interrelations among, state institutions). Conflicts between the supreme state institutions are also indirectly decided when the Constitutional Court presents conclusions on the violations of election laws during elections or on impeachment of state officials.

The doctrine of relations between legislative power and executive power has been formed from most varied aspects: by describing the form of government to which the model of the *structure of* and interrelations among supreme state institutions belongs,[79] by forming the doctrine of the relation between a law and a substatutory legal act,[80] by separating the powers of the Seimas and the Government in the sphere of tax relations,[81] by separating the competence of the Seimas and the Government in the spheres of forming and executing the budget,[82] by separating the powers of the Seimas and the President in the sphere of forming the Government,[83] by interpreting the powers of the President and the Government in the sphere of concluding international treaties,[84] by separating the competence of the Seimas, the Speaker of the Seimas, and the President in the legislation process, by interpreting the powers of the Seimas and the President when the President implements the right of delaying veto,[85] etc.

---

[78] *Inter alia*, the Constitutional Court's ruling of 13 May 2004.
[79] The Constitutional Court's ruling of 10 January 1998.
[80] *Inter alia*, the Constitutional Court's rulings of 19 January 1994, 15 May 2001, and 23 April 2001.
[81] *Inter alia*, the Constitutional Court's ruling of 9 October 1998.
[82] *Inter alia*, the Constitutional Court's rulings of 3 June 1999, 9 July 1999, and 14 January 2002.
[83] The Constitutional Court's ruling of 10 January 1998 and 23 November 1999.
[84] The Constitutional Court's ruling of 17 October 1995.
[85] The Constitutional Court's ruling of 19 June 2002.

When considering the constitutional issues of the legal regulation governing the activities of courts, the Constitutional Court has held on more than one occasion that the administration of justice is the function that determines the place of judicial power within the system of state institutions.[86] In the jurisprudence of the Constitutional Court, the ensuring of the powers of the judiciary is inseparable from the institutional guarantees of the rights and freedoms of persons. The Constitutional Court has noted that the independence of a court is an essential guarantee of ensuring human rights and freedoms, and is a necessary condition of a fair consideration of a case; consequently, this is also a necessary condition for trust in courts.[87] In its various rulings, the Constitutional Court has disclosed the constitutional doctrine of the judiciary as a fully fledged branch of state power, the justice function performed by the judiciary, the relations of the judiciary with other institutions of state power, and the independence of judges and courts.[88] The official constitutional doctrine formed by the Constitutional Court distinguishes the following guarantees in the system of the guarantees of the independence of judges and courts: the inviolability of the term of powers of judges; the inviolability of the person of a judge; social (material) guarantees of judges; the self-government of the judiciary as a fully fledged branch of state power; the guarantees of the financial and material–technical provision of courts (the organisational independence of courts).[89] It should be noted that the Constitutional Court also had to interpret its own constitutional status as part of the judiciary.[90]

To sum up, it should be held that, in its rulings on the issues of the constitutionality of the activities of legislative power and executive power, the Constitutional Court clarified the limits of the powers of respective institutions, the organisational autonomy of institutions, the importance of the competence conferred on an institution, whereas, in its rulings on the issues of the activity of the judiciary, the Constitutional Court protected the function carried out by this branch of state power, and strengthened the independence of judges who administer justice, as well as the independence of courts as an institutional system.

11. Do the decisions of your Court have binding force on other courts? Do other/ordinary courts follow/respect the case-law of your Court in all cases? Are there conflicts between your Court and other (supreme) courts?

[86] *Inter alia*, the Constitutional Court's rulings of 21 December 1999 and 12 December 2013.

[87] The Constitutional Court's ruling of 12 February 2001, Official Gazette *Valstybės žinios*, 2001, No 14-445.

[88] *Inter alia*, the Constitutional Court's rulings of 6 December 1995, 5 February 1999, 12 July 2001, and 29 June 2010.

[89] Birmontienė, T., "Konstitucinė teismų nepriklausomumo garantijų sistema" ["The Constitutional System of the Guarantees of the Independence of Courts"] in *Teismų nepriklausomumo garantijos*, Vilnius, 2013, p. 18.

[90] The Constitutional Court's ruling of 6 June 2006.

Paragraph 1 of Article 107 of the Constitution provides that a law (or part thereof) of the Republic of Lithuania or another act (or part thereof) of the Seimas, an act (or part thereof) of the President of the Republic, or an act (or part thereof) of the Government may not be applied from the day of the official publication of the decision of the Constitutional Court that the act in question (or part thereof) is in conflict with the Constitution of the Republic of Lithuania (Paragraph 1). The decisions of the Constitutional Court on the issues assigned to its competence by the Constitution are final and not subject to appeal (Paragraph 2). The Law on the Constitutional Court provides that rulings passed by the Constitutional Court are binding on all state institutions, **courts**, all enterprises, establishments, and organisations, as well as officials and citizens (Paragraph 2 of Article 72); the decisions based on legal acts that have been ruled to be in conflict with the Constitution or laws must not be executed if they had not been executed prior to the entry into force of the appropriate ruling of the Constitutional Court (Paragraph 4 of Article 72).

It is also important to stress that the Constitutional Court has noted that not only the content of rulings of the Constitutional Court, but also the content of its decisions and conclusions in which the Constitution is interpreted, i.e. the official constitutional doctrine is formulated, is binding on both law-making institutions (officials) and those institutions (officials) that apply law.[91] Thus, under the Constitution, the content of all the acts of the Constitutional Court in which the Constitution is interpreted, i.e. the official constitutional doctrine is formulated, is also binding on law-making institutions (officials) and those that apply law, including courts of general jurisdiction and specialised courts.[92] It has been held in the jurisprudence of the Constitutional Court that all courts of general jurisdiction – the Supreme Court of Lithuania, the Court of Appeal of Lithuania, regional courts, and local courts – are bound by the fact that the decisions of the Constitutional Court on the issues assigned to its competence by the Constitution are final and not subject to appeal, as entrenched in Article 107 of the Constitution; all courts of general jurisdiction are bound by the official constitutional doctrine, which is formed in the jurisprudence of the Constitutional Court.[93] All law-making and law-applying subjects, including courts, must pay regard to the official constitutional doctrine when they apply the Constitution; they may not interpret the provisions of the Constitution differently from how the Constitutional Court interpreted the said provisions in its acts.[94]

It should be noted that, according to representatives from courts of general jurisdiction, the constitutional doctrine has become a positive instrument of a legal regulation in such courts – the

[91] The Constitutional Court's ruling of 20 September 2005; the Constitutional Court's ruling of 28 March 2006.
[92] *Inter alia*, the Constitutional Court's ruling of 28 March 2006.
[93] The Constitutional Court's ruling of 28 March 2006.
[94] The Constitutional Court's ruling of 20 September 2005.

constitutional doctrine draws guidelines for legal practice and serves as a broad basis for reasoning given by courts of general jurisdiction. As regards the relations between the constitutional jurisprudence and other jurisprudential systems, e.g. the cassation jurisprudence, such relations are considered interfunctional partnership, while confrontation between the jurisprudential systems is deemed to be a thing that must not be tolerated.[95] Thus, it should be held that there have never been any serious conflicts between the Constitutional Court and courts of general jurisdiction or specialised courts.

12. Has Your Court developed/contributed to standards for law-making and for the application of law? (e.g. by developing concepts like independence, impartiality, acting in accordance with law, non bis idem, nulla poena sine lege, etc.)

It has been mentioned that the Constitutional Court's ruling of 13 December 2004 separately identified the requirements stemming from the constitutional principle of a state under the rule of law: (1) requirements for the legislature and other law-making subjects; (2) requirements for law-applying subjects.

Concerning **the requirements** (implied by the constitutional principle of a state under the rule of law) **for the legislature and other law-making subjects**, the Constitutional Court noted the following: "law-making subjects may pass legal acts only without exceeding their powers; the requirements established in legal acts must be based on the general provisions (legal norms and principles) that can be applied with regard to all the specified subjects of respective legal relationships; a differentiated legal regulation must be based exclusively on objective differences in the situation of the subjects of public relationships regulated by relevant legal acts; in order to ensure that the subjects of legal relationships know what is required from them by legal norms, legal norms must be established in advance, legal acts must be published officially, and they must be public and accessible; a legal regulation established in laws and other legal acts must be clear, easy to understand, and consistent; formulas in legal acts must be explicit; consistency and internal harmony of the legal system must be ensured; legal acts may not contain any provisions that at the same time regulate the same public relationships in a different manner; in order that the subjects of legal relationships could orient their behaviour according to the requirements of law, the legal regulation must be relatively stable; legal acts may not require the impossible *(lex non cogit ad impossibilia)*; the force of legal acts is prospective, while the retrospective validity of laws and

[95] Kryževičius, G., "Bendrosios kompetencijos teismai ir Konstitucija" ["Courts of General Jurisdiction and the Constitution"], www.lat.lt/lt/naujienos/kalbos/archive/gintaras-kryzevicius.-bendrosios-5dzt/p0.html.

other legal acts is not permitted *(lex retro non agit)* unless the legal act mitigates the situation of a subject of legal relationships and does not injure other subjects of legal relationships *(lex benignior retro agit)*; those violations of law for which responsibility is established in legal acts must be clearly defined; when setting legal restrictions and responsibility for violations of law, the legislature must pay regard to the requirement of reasonableness, as well as to the principle of proportionality, according to which the established legal measures must be necessary in a democratic society and suitable for achieving the legitimate and universally important objectives (there must be a balance between the objectives and measures); the rights of a person may not be restricted more than necessary in order to achieve the pursued objectives; if legal measures are related to sanctions for violations of law, in such cases, these sanctions must be proportionate to the committed violation of law; a legal regulation of public relationships must be established taking account of the requirements of natural justice, comprising, *inter alia*, the necessity to ensure the equality of persons before the law, the court, and state institutions and officials; when legal acts are passed, it is compulsory to take account of the procedural law-making requirements, including those established by the law-making subject itself; the hierarchy of legal acts, which stems from the Constitution, must be observed; etc."

The Constitutional Court also identified those **requirements** emanating from the constitutional principle of a state under the rule of law that are **applicable to law-applying subjects**: law-applying institutions must follow the requirement of the equal rights of persons; it is not permitted to punish twice for the same violation of law *(non bis in idem)*; responsibility (sanction, punishment) for violations of law must be established in advance *(nullum poena sine lege)*; an act is not considered to be criminal if it is not provided for in the law *(nullum crimen sine lege)*; jurisdictional and other law-applying institutions must be impartial and independent; they must seek to establish the objective truth and must adopt their decisions only on the grounds of law; judges may not apply any legal act that is in conflict with a higher-ranking legal act, *inter alia*, they may not apply any substatutory legal act that is in conflict with the Constitution or a law; similar cases must be decided in a similar manner; therefore, the discretion of jurisdictional authorities in deciding disputes and applying law is limited.

13. Do you have case-law relating to respect for the rule of law by private actors exercising public functions?

The Constitutional Court has not considered any constitutional justice cases relating to respect for the rule of law by private actors exercising public functions. Still, in this context, it is possible to mention the Constitutional Court's ruling of 22 December 2011, which declared

unconstitutional the relevant provisions of the Law on Science and Studies on the ground that the said provisions failed to establish the duty of non-state schools of higher education and non-state scientific research institutes to account to society for the funds of the state budget allocated to them. It was held in the same ruling that, when combining autonomy of schools of higher education with their responsibility and accountability to society, the legislature has the duty to establish such a legal regulation by which all (state and non-state) schools of higher education and all state and non-state scientific research institutes should inform society of the use of the funds of the state budget allocated to them. The duty of the legislature that was mentioned in that ruling is derived, *inter alia*, from Paragraph 2 (which consolidates the constitutional grounds for possessing, using, and disposing of state-owned property) of Article 128 of the Constitution, and this paragraph, as stated by the Constitutional Court,[96] must be interpreted by taking into consideration the constitutional principle of a state under the rule of law. Besides, the Constitutional Court has held that, *inter alia*, the striving for an open, just, and harmonious civil society, as consolidated in the Preamble to the Constitution, Paragraph 2 of Article 128 of the Constitution, as well as other constitutional provisions, give rise to the requirement that state-owned property must be treasured and not wasted.[97] Thus, it is possible to assert that the duty of non-state schools of higher education and non-state scientific research institutes to inform society of the use of the funds of the state budget allocated to them is also related to the constitutional principle of a state under the rule of law.

The Constitutional Court has also considered other cases in which it decided various issues related to commissioning private actors with the exercise of public functions. For example, in its ruling of 19 September 2002, the Constitutional Court declared unconstitutional the legal regulation that established the continuing duty of private actors – telecommunications enterprises – to use their property to fulfil state functions, which must be financed from state funds (in this case, to ensure and constantly maintain the technical feasibility of the facilities (which are not necessary in the economic activity of the telecommunications operators) required to control the content of information transmitted via telecommunications networks). In another ruling, which was adopted on 15 January 2015, the Constitutional Court recognised that the provision of the Road Transport Code, under which municipal institutions may select, *inter alia*, private carriers for the provision of public road passenger transport services by directly awarding contracts for the provision of public services rather than through a tender, was not in conflict with the Constitution. However, the issues considered in the above-mentioned cases were not related to the fact whether private actors, when exercising public functions, violated the Constitution, and, first of all, the principle of the rule of

[96] The Constitutional Court's ruling of 30 September 2003.
[97] Ibid.

law. Therefore, the rulings passed by the Constitutional Court in those cases did not formulate any requirements, arising from the principle of the rule of law, that would be binding on the said private actors.

14. Are public officials accountable for their actions, both in law and in practice? Are there problems with the scope of immunity for some officials, e.g. by preventing an effective fight against corruption? Do you have case-law related to the accountability of public officials for their actions?

The constitutional principle of a state under the rule of law is inseparable from the responsibility of state authorities to the public. This responsibility is constitutionally consolidated by stipulating that state institutions serve the people, that the scope of power is limited by the Constitution, and that state officials who violate the Constitution and laws, who raise personal or group interests above the interests of society, and who discredit state power by their actions may be removed from office under the procedure established in laws.[98] In order that citizens – the state community – could reasonably trust state officials, and in order that it would be possible to ascertain that all state institutions and officials follow the Constitution and law, and that those who do not obey the Constitution and law would not hold the office requiring the confidence of citizens, it is necessary that the activity of state officials be subject to public democratic control, comprising the possibility of removing from office those state officials who violate the Constitution and law, bring their personal interests or the interests of the group above public interests, or disgrace state power by their actions.[99] Public democratic control can be realised, among other things, through impeachment: a special procedure provided for in the Constitution and applied in ascertaining the constitutional responsibility of the officials indicated in the Constitution, i.e. in deciding on their removal from office for a gross violation of the Constitution, a breach of the oath, or the commission of a crime. Under the Constitution, the Constitutional Court has the power to present conclusions on whether the concrete actions of state officials against whom impeachment proceedings have been instituted are in conflict with the Constitution.

The Constitutional Court has given three[100] conclusions on the constitutionality of the actions of the members of the Seimas and other state officials against whom impeachment cases were instituted. The Constitutional Court recognised in all those conclusions that the actions of the said officials had been unconstitutional. In one of such conclusions, the Constitutional Court

[98] The Constitutional Court's conclusion of 31 March 2004.
[99] The Constitutional Court's rulings, *inter alia*, of 25 May 2004 and 13 May 2010.
[100] The Constitutional Court's conclusions of 31 March 2004, 27 October 2010, and 3 June 2014.

recognised that certain actions of the President of the Republic had been unconstitutional and that the Constitution had been violated grossly by the said actions;[101] in the other two conclusions, the Constitutional Court recognised that certain actions of respective members of the Seimas had been unconstitutional and that the said actions resulted both in a breach of the oath and in gross violations of the Constitution.[102]

It should be noted that, in order that certain state officials would be able to carry out unhampered the duties assigned to them by the Constitution and laws, the Constitution consolidates *expressis verbis* the immunity of certain state officials: the person of the President of the Republic is inviolable: while in office, he/she may be neither detained nor held criminally or administratively liable (Paragraph 2 of Article 86); a member of the Seimas may not be held criminally liable or be detained, or have his/her liberty restricted otherwise, without the consent of the Seimas (Paragraph 2 of Article 62); the Prime Minister and ministers may not be held criminally liable or be detained, or have their liberty restricted otherwise, without the prior consent of the Seimas or, in the period between the sessions of the Seimas, without the prior consent of the President of the Republic (Article 100); 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 (Paragraph 2 of Article 114).

The Law on Elections to the Seimas provides that, after the announcement of the names of candidates and lists of candidates by the Central Electoral Commission, as well as until the first meeting of a newly elected Seimas (after a repeat election or a by-election until the oath of a member of the Seimas), a candidate to the post of a member of the Seimas may not be held criminally liable or be detained, or have his/her liberty restricted otherwise, without the consent of the Central Electoral Commission (Paragraph 1 of Article 49).

It should be mentioned that, a while ago, the Constitutional Court received a petition requesting an investigation into the constitutionality of certain provisions of the Law on Elections to the Seimas and those of the Statute of the Seimas insofar as "they do not provide for the immunity of a political party whose list of candidates participates in an election, as well as the immunity of a political party whose list of candidates participates in distribution of mandates, from criminal liability". According to the petitioner, the said provisions of the Law on Elections to the Seimas and the Statute of the Seimas "grant immunity from criminal liability to a candidate for the post of a member of the Seimas and to a member of the Seimas; however, they do not grant immunity from criminal liability to a political party whose list of candidates participates in an election, nor do they

[101] The Constitutional Court's conclusion of 31 March 2004.
[102] The Constitutional Court's conclusions of 27 October 2010 and 3 June 2014.

grant such immunity to a political party whose list of candidates participates in the distribution of mandates". Nonetheless, the Constitutional Court held that, according to the Constitution, the Statute of the Seimas need not establish the legal regulation – "the immunity of a political party whose list of candidates participates in election, as well as the immunity of a political party whose list of candidates participates in the distribution of mandates, from criminal liability" – as specified by the petitioner; thus, the consideration of this petition was refused.[103]

IV. The law and the individual

15. Is there individual access to your court (direct/indirect) against general acts/individual acts? Please briefly explain the modalities/procedures.

The Lithuanian legal system does not provide for the institution of the individual constitutional complaint, which would enable individuals to directly apply to the Constitutional Court. According to the Constitution, the right to apply to the Constitutional Court of the Republic of Lithuania is vested in the Seimas *in corpore*, not less than 1/5 of all the members of the Seimas, the President of the Republic, the Government, and courts. In its decision of 28 June of 2016, the Constitutional Court held that, under Article 106 of the Constitution, individuals do not have the right to directly address the Constitutional Court for determining the legality of the acts of the Seimas, the President of the Republic, or the Government even when the constitutional review of such acts falls under the competence of the Constitutional Court and they could violate the rights or freedoms of persons.

Preliminary arrangements for the introduction of the individual constitutional complaint in Lithuania were made on 4 July 2007, when the Seimas approved the Conception of the Individual Constitutional Complaint; however, as the economic crisis broke out, the implementation of the Conception was postponed for an indefinite period of time, as it was believed it might bring an unbearable financial burden on the state.

The Lithuanian legal system provides for the possibility of indirect access to the constitutional justice body (a person may access the constitutional justice body through intermediate bodies, which are courts in the case of Lithuania). In Lithuania, individuals have the possibility of defending their constitutional rights through the courts of general jurisdiction and the courts of special (administrative justice) competence.

This possibility is regulated by Article 110 of the Constitution. The basic provision here is the prohibition precluding the judiciary from applying unconstitutional legal acts: a judge cannot

[103] The Constitutional Court's decision of 2 May 2013.

apply a law that is in conflict with the Constitution (Paragraph 1 of Article 110 of the Constitution). In its turn, this prohibition logically follows from the constitutional principle of the supremacy of the Constitution, as stated in Paragraph 1 of Article 7 of the Constitution, according to which any law or other act contrary to the Constitution cannot be valid.

The main characteristics of the constitutional legal regulation governing the duty of Lithuanian courts, where they find serious grounds to doubt the constitutionality of the applicable legal act, to apply to the Constitutional Court with the request to rule on this issue (preliminary request procedure) are as follows: (1) the power to apply to the Constitutional Court is granted to all courts; (2) a reasonable doubt that appears during the consideration of a case and concerns the constitutionality of a legal act applicable in the case constitutes the ground to apply to the Constitutional Court; (3) courts are independent from the position of parties to the case in deciding whether to apply to the Constitutional Court, i.e. they can apply to the Constitutional Court both on the initiative of the parties and on their own initiative; (4) the parties to the case under consideration by the applying court are not involved in the proceedings in the Constitutional Court; (5) the preliminary request procedure cannot substitute for the proceedings in the applying court, i.e. it has a limited purpose to answer the question regarding the constitutionality of the act applicable in the case before the applying court; (6) most important is that it is the duty, not only the right or a matter of discretion, of courts to apply to the Constitutional Court in each case when they face serious doubts regarding the constitutionality of the applicable legal act; (7) the accompanying procedural duty of the applying court is to suspend the consideration of the case at the same time when it decides to apply to the Constitutional Court with the preliminary request.[104]

The model of direct preliminary requests when the power to apply to the Constitutional Court is granted to all courts directly, without the involvement of any superior intermediate court, is an important means to ensure the supremacy of the Constitution and protect constitutional rights and freedoms and partly compensates the lack of the institution of the individual constitutional complaint. However, the effectiveness of such indirect access to the Constitutional Court is heavily dependent on the capacity and willingness of courts to identify potentially unconstitutional legal acts and, consequently, to apply to the Constitutional Court.

16. Has your Court developed case-law concerning access to ordinary/lower courts (e.g. preconditions, including costs, representation by a lawyer, time limits)?

[104] Žalimas, D., "The Individual Constitutional Complaint as an Effective Instrument for the Development of Human Rights Protection and Constitutionalism", 2015, www.lrkt.lt/data/public/uploads/2016/07/2015-10-02-individualcomplaint-kiev.pdf.

It has been mentioned that, in the jurisprudence of the Constitutional Court, the right to judicial protection is deemed to be an element of the principle of a state under the rule of law. In its jurisprudence, the Constitutional Court emphasised in particular the significance of **the right of a person to apply to a court**. The right of a person to apply to a court may not be limited or denied; otherwise, a threat would arise for one of the most significant values of a state under the rule of law. The rights of a person must be defended not formally, but in reality and effectively against unlawful actions of private persons, as well as against those of state institutions or its officials.[105]

The Constitutional Court has also held that Paragraph 1 of Article 30 of the Constitution consolidates the constitutional principle of judicial protection; in a democratic state, courts are the main institutional guarantee of human rights and freedoms; the constitutional principle of judicial protection is a universal one; the defence of violated rights in a court is guaranteed to persons regardless of their legal status; the infringed rights and legitimate interests of persons must be defended in a court irrespective of whether or not they are directly established in the Constitution.

When fulfilling its constitutional duty to lay down such a legal regulation on the basis of which all disputes concerning the violation of the rights and freedoms of a person could be resolved in a court, and by paying regard, *inter alia*, to the imperatives consolidated in Paragraph 2 of Article 29 and Paragraph 1 of Article 30 of the Constitution, the legislature may establish a certain procedure governing the constitutional right to apply to a court, *inter alia*, the conditions, time limits, and means of implementing this right that are determined, *inter alia*, by the public interest; however, the legislature may not establish any such legal regulation that would deny the right of a person to defend his/her rights and freedoms in a court where he/she believes that his/her rights and freedoms are violated.[106]

The right of a person to apply to a court also implies his/her right to the due process of law; the latter right is a necessary condition for the administration of justice.[107] The constitutional right of a person to the due court process implies the duty of the legislature to establish by law such proceedings for consideration of cases in a court that would be in line with the norms and principles of the Constitution. The legislature, when regulating, by means of a law, the relations of the consideration of cases in a court, must pay regard to the Constitution, *inter alia*, to the principles laid down in Article 117[108] thereof, as well as to the constitutional principle of a state under the rule

[105] *Inter alia*, the Constitutional Court's rulings of 1 October 1997, 8 May 2000, 12 July 2001, 17 August 2004, and 29 December 2004.

[106] The Constitutional Court's ruling of 5 July 2013.

[107] *Inter alia*, the Constitutional Court's ruling of 13 December 2004.

[108] Article 117: "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.

of law, those of the equality of rights and justice, and the impartiality and independence of judges.[109]

In its jurisprudence, the Constitutional Court also attaches high importance to the right of persons to defence and their right to an advocate; these rights may not be denied or restricted on any grounds or any conditions.[110] The Constitutional Court has held that the right to defence and the right to have an advocate are found among the fundamental human rights. The right to defence and the right to have an advocate help to ensure a person's freedom and inviolability, as well as the protection of other constitutional rights and freedoms.[111]

The Constitutional Court has held that the constitutional right to defence and the right to have an advocate give rise to the duty of the legislature to particularise in laws the implementation of the constitutional right of persons to judicial protection. When it establishes such a legal regulation, the legislature is bound by the Constitution. The constitutional right to defence and the right to have an advocate also give rise to the duty of state institutions to ensure real opportunities for the implementation of these rights.[112] It should be noted that the constitutional right to judicial protection and the right to have an advocate, which are consolidated in the Constitution, *inter alia*, in the provisions of Paragraph 1 of Article 30 and Paragraph 6 of Article 31 thereof, give rise to the duty of the legislature to establish such a legal regulation that would create the preconditions for a person who defends his/her violated rights and legitimate interests to make use of legal assistance rendered by an advocate. *Inter alia*, the legislature should provide for such rights of advocates that would enable them to pursue their professional activity and to render effective legal assistance.[113]

In order to ensure the right of a person to have an advocate as one of the conditions for the effective implementation of the right to judicial defence, the legislature must establish, *inter alia*, such a legal regulation whereby an advocate could receive all information that is held by state and municipal institutions and is necessary for the implementation of the said right of a person.[114]

In its jurisprudence, the Constitutional Court has also held that the Constitution, *inter alia*, the right of a person to apply to a court, as consolidated in Paragraph 1 of Article 30 thereof, the imperative of a public and fair hearing of a case by an independent and impartial court, as guaranteed in Paragraph 2 of Article 31 thereof, and the constitutional principle of a state under the

---

In the Republic of Lithuania, court proceedings shall be conducted in the state language.

Persons who do not have sufficient knowledge of the Lithuanian language shall be guaranteed the right to participate in the investigation and court proceedings through a translator."

[109] The Constitutional Court's ruling of 6 December 2012.

[110] The Constitutional Court's ruling of 12 February 2001.

[111] The Constitutional Court's ruling of 10 July 1996.

[112] *Inter alia*, the Constitutional Court's ruling of 12 February 2001.

[113] The Constitutional Court's ruling of 9 June 2011.

[114] Ibid.

rule of law imply the duty of the state to ensure, under the procedure and conditions established in a law and taking account of the financial capacities of the state, the provision of effective legal aid, *inter alia*, legal advice and legal representation services, to those socially sensitive (vulnerable) persons to whom, in the general market of legal services, such legal aid would otherwise either be a sham or its access would be extremely difficult due to financial reasons, as well as in those cases when this is necessary for the interests of justice.[115]

17. Has your Court developed case-law on other individual rights related to the rule of law?

In the jurisprudence of the Constitutional Court, the official constitutional doctrine of ensuring human rights and freedoms, as one of the standards found in the principle of a state under the rule of law, was developed in various contexts, *inter alia*, in the contexts of liability for violations of law, the legal regulation related to the definition of the content of human rights and freedoms or that related to the guarantees of implementing human rights and freedoms in legal acts, the protection of legitimate expectations, etc.

When pointing out the requirements, arising from the constitutional principle of a state under the rule of law, for the legislature and other law-making subjects, the Constitutional Court held, *inter alia*, that the legal regulation related to defining the content of human rights and freedoms or consolidating the guarantees of their implementation may be established only by means of a law. On the other hand, in cases where the Constitution does not require that particular relations linked with human rights and with their exercise be regulated by law, such relations may also be regulated by means of substatutory acts – acts that regulate the process (procedural) relations of implementing human rights, the procedure of implementing individual human rights, etc., however, under no circumstances may substatutory acts establish such a legal regulation of the relations linked with human rights and the exercise thereof that would compete with the one established in laws.

Various aspects of ensuring human rights and freedoms were also discussed by identifying the requirements, stemming from the principle of a state under the rule of law, for law-applying subjects: *inter alia*, the prohibition on punishing anyone twice for the same violation of law *(non bis in idem)*; liability (sanction, punishment) for any violations of law must be established in advance *(nulla poena sine lege)*; no act is criminal unless it is defined as such by law *(nullum crimen sine lege)*, etc. These aspects were discussed in more depth when answering question no 12.

[115] The Constitutional Court's ruling of 9 July 2015.

The ensuring of human rights and freedoms was also analysed in the context of the protection of legitimate expectations as one of the imperatives found in the principle of a state under the rule of law. The Constitutional Court held that legal certainty, legal security, and the protection of legitimate expectations imply the duty of the state to ensure the certainty and stability of an established legal regulation, to protect the rights (including acquired rights) of persons, to respect legitimate interests and legitimate expectations (otherwise, the trust of persons in the state and law would not be ensured), and to fulfil the obligations undertaken to a person. One of the elements of the protection of the principle of legitimate expectations is the protection of the rights acquired under the Constitution and under the laws and other legal acts that are not in conflict with the Constitution; in the relationships of a person with the state only those expectations of a person are protected and defended that arise from the Constitution itself or from the laws and other legal acts that are not in conflict with the Constitution; only such expectations of a person in relationships with the state are considered legitimate.

In its jurisprudence, when disclosing the content of concrete human rights and freedoms consolidated in the Constitution, the Constitutional Court emphasised on more than one occasion that the said human rights and freedoms are inseparable from the constitutional principle of a state under the rule of law. For example, the Constitutional Court has held that freedom of thought, conscience, and religion is inseparable from the universal constitutional principle of a state under the rule of law;[116] it has held on more than one occasion that the right to receive fair pay for work, which is entrenched in Paragraph 1 of Article 48 of the Constitution, is inseparable from the constitutional principle of a state under the rule of law;[117] the Constitutional Court has held that, when interpreting Article 52 of the Constitution (the provisions of this article guarantee the right to social provision), it is also necessary to take into consideration the constitutional principle of a state under the rule of law.[118]

18. Is the rule of law used as a general concept in the absence of specific fundamental rights or guaranties in the text of the Constitution in your country?

A list of fundamental constitutional rights is enshrined in Chapter II "The Human Being and the State" of the Constitution of the Republic of Lithuania. When applying to the Constitutional Court, the petitioners invoke the provisions of the Constitution that consolidate certain particular rights. Therefore, as a general rule, the Constitutional Court interprets and refers to the rights

[116] The Constitutional Court's ruling of 13 June 2000.
[117] *Inter alia*, the Constitutional Court's decision of 20 April 2010 and its ruling 9 July 2015.
[118] *Inter alia*, the Constitutional Court's rulings of 3 December 2003 and 7 February 2013.

consolidated in the Constitution. Nevertheless, it can be mentioned that certain rights (the right to due and fair legal process, the right to an independent and impartial court) are viewed to derive not only from specific provisions of the Constitution, but also from the principle of a state under the rule of law.

It should be noted that certain elements of the principle of a state under the rule of law (in particular, the protection of legitimate expectations) may be relevant **in defending** the rights and guarantees not directly provided for in the Constitution. In this context, mention should be made of the official constitutional doctrine concerning the right to a pension. Old-age and disability pensions are the types of pensions that are *expressis verbis* specified in Article 52 of the Constitution. The Constitutional Court has held that, under the Constitution, in addition to pensions *expressis verbis* specified in Article 52, it is also permitted that other pensions or social assistance be established by means of a law. After the types of pensions, their amounts, the entitled persons, as well as the grounds and conditions for granting and paying pensions, are established by law, the duty arises for the state to follow the constitutional principles of the protection of legitimate expectations and legal certainty in the area of pensionary provision. In cases where pensions that are established by means of a law and are not in conflict with the Constitution are granted and paid, the rights and legitimate expectations acquired by the persons concerned should also be linked to the protection of their ownership rights.[119] Consequently, these persons have the right to reasonably expect that their rights acquired under the valid laws or other legal acts that are not in conflict with the Constitution will be retained for the established period of time and that they will be able to implement them in reality.

It should also be noted that the cases in which the Constitutional Court states that an act conflicts only with the constitutional principle of a state under the rule of law are rare. Nonetheless, there are some examples in the jurisprudence of the Constitutional Court where the conflict of the provisions of a law with the principles of a state under the rule of law and justice provided sufficient grounds for declaring the said provisions to be unconstitutional, as, for instance:

– in its ruling of 6 December 2000, the Constitutional Court recognised that the provisions of the Law on Tax Administration, whereby the minimum amounts of fines to be calculated on the amount of the income of the relevant enterprise (or on the amount of income concealed due to false accounting), where in all cases a fine, depending on the committed violation, could not be smaller than 5 800 and 14 500 euros, were in conflict with the principles of justice and a state under the rule of law, which are entrenched in the Constitution. The Constitutional Court noted that the consolidation of the said minimum amounts of fines led to the legal situation where a fine imposed

[119] The Constitutional Court's rulings, *inter alia*, of 4 July 2003, 24 December 2008, and 22 February 2013.

on certain economic operators for the same violations of laws comprised a much larger portion of the income of an enterprise (or that of the amount of income concealed due to false accounting) compared with a fine imposed on other economic operators; thus, such a legal regulation did not comply with the principles of justice and a state under the rule of law;

– in its ruling of 24 December 2008, the Constitutional Court recognised that the provisions of the Law on the State Pensions of the Officials and Servicemen of the Interior, the Special Investigation Service, State Security, National Defence, the Prosecution Service, the Department of Prisons and of the Establishments and State Enterprises That Are Subordinate to the Latter, as well as those of the Law on the State Pensions of Officials and Servicemen, according to which the state pensions of officials and servicemen were not paid to the pensioners who were fully supported by the state, were in conflict with the constitutional principle of a state under the rule of law. The Constitutional Court noted that the impugned provisions did not sufficiently disclose the content of the ground – "full support by the state" – for the non-payment of the state pension and that the said vague and unclear formulation could not provide a basis for terminating the payment of the granted and paid state pension of officials and servicemen. Since the legislature had not properly disclosed the content of the impugned provision, it was impossible to assess whether, in limiting the payment of the granted state pension of officials and servicemen to the pensioners who received full support by the state, the requirement of proportionality was followed and whether there was a violation of both the right of a person and his/her legitimate expectation (where the said right and legitimate expectation were related to the protection of the rights of ownership of the person) to receive the granted and paid state pension of officials and servicemen, i.e. it was impossible to assess whether the ground – "full support by the state" – for the non-payment of the state pension of officials and servicemen was established in observance of the Constitution;

– in its ruling of 5 March 2013, the Constitutional Court recognised that the provisions of the Provisional Law on the Recalculation and Payment of Social Benefits and the relevant items of the Regulations on Social Insurance Allowances of Sickness and Maternity, as approved by the Government, where the said provisions and relevant items created the preconditions not only for reducing the granted maternity (paternity) allowances and benefits by 10 per cent, but also for additionally reducing those allowances and benefits that exceeded certain established maximum amounts, were in conflict with the constitutional principle of a state under the rule of law. Such a reduction in granted maternity (paternity) allowances and benefits was uneven; therefore, the said reduction did not comply with the proportionality requirements that arise from the constitutional principle of a state under the rule of law; in view of the fact that proportionality is an element of the

constitutional principle of a state under the rule of law, the Constitutional Court stated that there was a conflict with the constitutional principle of a state under the rule of law;

– in its ruling of 16 June 2015, the Constitutional Court recognised that, in view of the procedure of its adoption, a government resolution that had amended a previous government resolution and, among other things, reduced the maximum size of new plots of land in the city of Kaunas was in conflict with the constitutional principle of a state under the rule of law. The Constitutional Court held that the Government failed to follow the procedure established in the law: according to the said procedure, such sizes could be approved only upon receiving a proposal of the relevant municipality concerning the establishment (amendment) of the said sizes; therefore, the Government violated the constitutional principle of a state under the rule of law, according to which the Government, when passing legal acts, must comply with laws that are in force.

It should be noted that any other constitutional principles, with the exception of the constitutional principle of a state under the rule of law and the constitutional principle of justice, have not so far served as an independent legal basis for stating that a certain legal regulation is in conflict with the Constitution; and in view of the fact that, under the doctrine of the Constitutional Court, the constitutional principle of justice is an inseparable element of the content of the constitutional principle of a state under the rule of law, it is possible to assert that only the constitutional principle of a state under the rule of law has so far served as an independent legal basis for stating that a certain legal regulation is in conflict with the Constitution.