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CONSTITUTIONAL JUSTICE: FUNCTIONS AND RELATIONSHIP WITH THE OTHER PUBLIC AUTHORITIES

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I. THE CONSTITUTIONAL COURT'S RELATIONSHIP TO PARLIAMENT AND GOVERNMENT

In a democratic state under the rule of law the legislative, executive and judicial powers are implemented by separate and independent institutions. The Constitutional Court, while administering constitutional justice commissioned to it and while implementing constitutional control makes influence, in one or another manner, on the activity of institutions of the legislature and the executive.

The main function of the institution of the legislature—the parliament—is adoption of laws regulating the most important spheres of life of society. However, the myth of infallibility of the parliament or that of the law, which was popular at the beginning of the previous century, was shattered long ago, while the theory that a law, as expression of the common will of representatives of the people, cannot be bad to the people, has been refuted. The legislative institution is a political institution of power, which adopts decisions on the basis of political agreements and compromise, therefore, the Constitutional Court's exercised control over the laws adopted by the parliament is an essential factor in order to protect human rights and freedoms. The legitimacy of a law and its lawfulness are comprehended as conformity of the law with the Constitution—the supreme law of the country—embodying justice, entrenching the basic human rights and freedoms and the fundamentals of relations between authority and the human being. Therefore, one of the main functions of the Constitutional Court is assessment of legal acts passed by the institution of the legislative power with regard to their compliance with the Constitution. Lawful activities of the legislature are possible only without overstepping the limits established in the Constitution whose supremacy is guaranteed by the Constitutional Court. A harmonious relation of the Constitutional Court with the legislature is also important in the aspect that it shows how the legal system of the state, which is formed by the institution of legislative power, fits to the supreme law of the country—the Constitution—and whether the actual rule of constitutional norms is guaranteed.

As a rule, institutions of the executive also participate in the process of adoption of legal acts. The Constitution Republic of Lithuania does not provide for delegated legislation, therefore, the Government has not been granted the powers to adopt legal acts, which, in their power, would be equal to laws. However, the legislator can, by means of a law, grant the right to the Government, in the course of execution of laws and Seimas resolutions, to regulate the relations which are not regulated by the law. The Government has been granted the right to adopt corresponding sub-statutory acts, which may not be in conflict not only with the supreme legal act of the country—the Constitution—but also with the laws as well. The compliance of sub-statutory legal acts adopted by the Government with the Constitution and legal acts of higher legal power—constitutional laws and laws—is assessed by the Constitutional Court.

When the Constitutional Court decides regarding the fate of a law or other legal act, there exists also a possibility of abolishment of the power of this legal act, therefore, constitutional supervision, i.e. review of constitutionality of laws and other legal acts always means a certain intervention into the activity of law-making institutions. While assessing the constitutionality and lawfulness of the results—adopted legal acts—of the activity of law-making subjects, the Constitutional Court can recognise them invalid from the day of official publishing of the Constitutional Court act, however, it cannot create a new legal norm, replacing the one that lost its validity. Therefore, the Constitutional Court does not seek to directly interfere with the prerogative function of law-making institutions—issuance of legal acts. The power of the Constitutional Court is determined only by its indirect participation in the activities of state institutions, by exercising control, in the established manner, over lawfulness and constitutionality of adopted legal acts[1] and by removing the legal norms, which are in conflict with the Constitution, from the legal system of the state. Thus, it is evident that the Constitutional Court's relationship to institutions of the legislature and the executive is especially tight and necessary.

1. **The role of Parliament (as the case may be, of the Government) in the procedure for appointing judges to the Constitutional Court. Once appointed, can judges of the Constitutional Court be revoked by that same authority? What could be the grounds/ reasons for such revocation?**

The procedure for appointment of Constitutional Court justices is established *expressis verbis* in Article 103 of the Constitution and detailed in Article 4 of the Law on the Constitutional Court. The Constitutional Court shall consist of 9 justices, each appointed for a single nine-year term of office. In its jurisprudence the Constitutional Court has noted that under the Constitution, when justices of the Constitutional Court are being appointed, only the following subjects *expressis verbis* specified in the Constitution enjoy respective powers: 1) the state official who presents the candidature of a justice of the Constitutional Court to the Seimas;[2] 2) the Seimas which adopts a decision concerning appointment of the presented candidate as a justice of the Constitutional Court (Constitutional Court ruling of 2 June 2005).

Under the Constitution, the Constitutional Court is formed by representatives of all three branches of state power. Candidates to justices of the Constitutional Court are equally presented by the President of the Republic (representing the executive), the Speaker of the Seimas (representing the legislature) and the President of the Supreme Court (representing the judiciary). From the presented candidates the justices of the

[1] Lapinskas K.: Lietuvos Respublikos Konstitucinis Teismas valstybės valdžių sistemoje [The Constitutional Court of the Republic of Lithuania in the System of Branches of State Power] // Konstitucinis Teismas ir konstitucingumo garantijos Lietuvoje [The Constitutional Court and Constitutionality Guarantees in Lithuania] (conference material), Vilnius: The Constitutional Court of the Republic of Lithuania, 1995.

[2] Namely, the President of the Republic, the Speaker of the Seimas and the President of the Supreme Court.

Constitutional Court are appointed by the Seimas by adopting a resolution on appointing justices of the Constitutional Court. The Seimas appoints the President of the Constitutional Court from among its justices upon the presentation by the President of the Republic.

Before taking office, the appointed justices of the Constitutional Court take an oath in a sitting of the Seimas. The oath of justices of the Constitutional Court is accepted by the Speaker of the Seimas. The participation of the Speaker of the Seimas in the solemn taking of the oath is not a mere symbolical act: namely the moment of the oath, which is accepted by the Speaker of the Seimas, is regarded as the beginning of the powers of justices of the Constitutional Court; until the person has not taken the oath, he may not take office.

Thus, the institution of legislature participates directly in the formation of the Constitutional Court both through the Speaker of the Seimas, as an official empowered to present candidatures of 1/3 of justices of the Constitutional Court, and as the whole institution *in corpore,* adopting a decision on appointing the presented candidates as justices of the Constitutional Court. This right of the institution of the legislature is entrenched in the Constitution and no one can deny or limit it.[3]

In the Constitution also a final list of termination of powers of justices of the Constitutional Court is entrenched. Under Article 108 of the Constitution, the powers of a justice of the Constitutional Court shall cease upon the expiration of the term of powers (persons are appointed as justices only for a single nine-year term of office), upon the death of the justice, upon resignation of the justice, and when he is incapable to hold office due to the state of his health or when the Seimas removes him from office in accordance with the procedure for impeachment proceedings.

As mentioned, all justices of the Constitutional Court from the candidates presented by corresponding representatives of branches of state power are appointed by the institution of legislature—the Seimas. In some cases it is the Seimas which, in pursuance of the Constitution and laws, adopts a decision to dismiss justices of the Constitutional Court.

The Seimas may remove a justice of the Constitutional Court from office while following Article 74 of the Constitution, in which the impeachment proceedings are provided for. The powers of the justice of the Constitutional Court cease after the Seimas by the majority vote of 3/5 of all Members of the Seimas adopts a decision to remove the justice of the Constitutional Court from office for gross violation of the

[3] The Constitutional Court ruling of 2 June 2005 held: "Under the Constitution, no institution and no official enjoys powers to deny or limit the constitutional right of the Seimas either to appoint the presented person as a justice of the Constitutional Court, or not to appoint him. If such powers were established by means of a law or another legal act, preconditions would be created to impede reconstitution of the Constitutional Court—one of the institutions of state power consolidated in the Constitution—under the procedure established in the Constitution."

Constitution or breach of oath, also if it transpires that a crime has been committed. In this case the removal of the justice of the Constitutional Court, in case there exist corresponding grounds, is determined namely by the will of the institution of legislature. Alongside, it is necessary to note that the Seimas can adopt such a decision only after it receives a conclusion of the Constitutional Court that the justice of the Constitutional Court has grossly violated the Constitution (breached the oath).

The Seimas adopts a decision regarding termination of the powers of a justice of the Constitutional Court also in the other two situations: upon presentation by the Speaker of the Seimas when a justice of the Constitutional Court expresses his intention to resign from office and when there is a corresponding decision of the Constitutional Court and a conclusion of the medical commission formed by the Minister of Health that the justice is incapable to hold office due to the state of his health, i.e. in the course of one year the justice is ill for more than 4 months, or if he falls ill with a fatal or other lingering disease which precludes him from discharging the duties of office.

2. To what extent is the Constitutional Court financially autonomous – in the setting up and administration of its own expenditure budget?

The financial autonomy of the Constitutional Court is derived from the principle of independence of courts, which is entrenched in the Constitution.[4] Article 5^1 of the Law on the Constitutional Court provides that the Constitutional Court freedom and independence from other institutions shall be ensured *inter alia* by financial and material-technical guarantees secured by law; that the Constitutional Court shall be financed from the state budget by ensuring the possibility to the Constitutional Court to independently and properly perform the functions of constitutional supervision. The Law on the Constitutional Court also provides that its own estimate of expenditure shall be approved by the Constitutional Court itself, which shall also independently dispose of the funds that are allocated to it. Restriction of the financial conditions of Constitutional Court activities provided by law shall be prohibited.

In its jurisprudence the Constitutional Court has held that the financial independence of courts is secured by such legal regulation whereby funds to the system of courts and to each court are allocated in the state budget which is approved by means of a law, and that such guarantee of the organisational independence of courts is one of essential preconditions for securing human rights; the state budget must provide as to how much funds are to be allocated to every individual court so that proper conditions would be created for administration of justice (Constitutional Court rulings of 21 December 1999 and 9 May 2006). While bearing in mind the official constitutional doctrine, it also needs to be emphasised that the legislative regulation whereby the institutions or officials of the executive (but not the Seimas, by means of approving the state budget

[4] In its ruling of 22 October 2007, the Constitutional Court held that the independence of judges and courts is *"inter alia* ensured by consolidating self-governance of the judiciary, meaning that the judiciary is all-sufficient, and its financial and technical provision".

by law) would allocate financial appropriations to concrete courts, would not be co-ordinated with the principles of separation of the executive and the judiciary, of independence and mutual self-dependence of these branches of power, which are established in the Constitution, and would create an opportunity for the executive to exert influence upon activities of courts. The institutions of the executive, while preparing a draft state budget and seeking to achieve that the draft state budget would provide sufficient funds for securing proper activities of courts, have the right to receive information from presidents of courts about the needs of courts.

Therefore, while seeking to secure the implementation of the principles of financial independence and separation of powers, the budget of the Constitutional Court, as well as the budgets of other courts, is planned and a draft budget is prepared by the Government, whereas the draft budget prepared by the Government is approved by the Seimas by means of adoption of a corresponding law. Each year, the Constitutional Court submits investment projects, amounts of appropriations and other plans about predicted expenditures for the next budget year to the Ministry of Finance, which is responsible for preparation of a draft budget. After the Seimas has approved the budget of the Constitutional Court by means of a law, the allocated sum may not be changed, however, it may be revised when there occurs an especially grave economic and financial situation in the state. The Court disposes of the funds allotted to it freely and independently from institutions of the executive, it distributes the funds according to its needs. The Court submits reports about the execution of the budget to the Ministry of Finance and the State Control.

3. **Is it customary or possible that Parliament amends the Law on the Organization and Functioning of the Constitutional Court, yet without any consultation with the Court itself?**

When the Seimas adopts the Law on the Constitutional Court and makes amendments to it there is no provided obligation that it must consult with the Constitutional Court. The Seimas follows the common procedure of legislation, which is regulated by the Statute of the Seimas. The Statute of the Seimas does not directly provide that in the course of adoption of a respective legal act one should ask an opinion of the interested institution, therefore, the Seimas does not have to do so. However, in practice, in the course of drafting amendments to the Law on the Constitutional Court, as a rule, there are consultations with the Constitutional Court.

4. **Is the Constitutional Court vested with review powers as to the constitutionality of Regulations/ Standing Orders of Parliament and, respectively, Government?**

The competence of the Constitutional Court is entrenched in Articles 102 and 105 of the Constitution. The Constitutional Court investigates and adopts a decision whether the laws and other acts adopted by the Seimas are not in conflict with the

Constitution, also, whether the acts of the President of the Republic and the Government are not in conflict with the Constitution and laws.

The Constitution and the Law on the Constitutional Court, in which the competence of the Constitutional Court is defined, do not establish verbatim that the constitutionality of norms of the Statute of the Seimas or the lawfulness of the provisions of the Work Regulation of the Government may become the object of investigation by the Constitutional Court. Such powers of the Constitutional Court stem from the principles of the supremacy of the Constitution, a state under the rule of law, hierarchy of legal acts and other constitutional imperatives. The Constitutional Court has held in its jurisprudence that, under the Constitution, there may not be any such laws adopted by the Seimas the compliance of which with the Constitution and constitutional laws would not be subject to investigation by the Constitutional Court; under the Constitution, there may not be any such other legal acts adopted by the Seimas the compliance of which with the Constitution, constitutional laws and laws would not be subject to investigation by the Constitutional Court; under the Constitution, there may not be any such acts of the President of the Republic the compliance of which with the Constitution, constitutional laws and laws would not be subject to investigation by the Constitutional Court; under the Constitution, there may not be any such acts of the Government the compliance of which with the Constitution, constitutional laws, laws and Seimas resolutions on implementation of laws would not be subject to investigation by the Constitutional Court (Constitutional Court ruling of 30 December 2003). Therefore, when the Constitutional Court was investigating the constitutionality of the Statute of the Seimas for the first time, substantiated it by the fact that the statute is a legal act adopted by the Seimas which, under the Constitution, has the power of a law, therefore, it had to be assessed both in the formal and substantive sense. All the more so that there may not be any such legal act adopted by the Seimas the compliance of which with a legal act of higher legal power would not be subject to investigation by the Constitutional Court.

The Constitutional Court has investigated the constitutionality of provisions of the Statute of the Seimas more than once; in approximately half of the cases considered by the Constitutional Court one established and recognised the conflict of the provisions of the Statute of the Seimas with the Constitution. Almost all rulings of the Constitutional Court which stated the incompliance of the provisions of the Statute of the Seimas with the Constitution have been implemented.

Correspondingly, the Constitutional Court, it goes without saying, would investigate the compliance of the provisions of the Work Regulation of the Government, approved by a Government resolution, with the Constitution and laws on the grounds alone that, as it has been mentioned, under the Constitution, the Constitutional Court enjoys the powers to investigate lawfulness of all acts of the Government, therefore, there may not by any such acts of the Government the lawfulness of which would not be subject to investigation by the Constitutional Court. However, so far the Constitutional Court has not received any petitions requesting to investigate the lawfulness of provisions of the Work Regulation of the Government.

5. Constitutionality review: specify types / categories of legal acts in regard of which such review is conducted.

It has been mentioned that the competence of the Constitutional Court is entrenched in Articles 102 and 105 of the Constitution. The main function of the Constitutional Court of the Republic of Lithuania, as of most institutions exercising constitutional review, is assessment of the constitutionality and lawfulness if the legal acts adopted by the Seimas, the Government and the President of the Republic. Under the Constitution, the Constitutional Court investigates and adopts a decision whether the laws and other acts adopted by the Seimas are not in conflict with the Constitution, also, whether the acts of the President of the Republic and the Government are not in conflict with the Constitution and laws. Thus, the Constitution has distinguished two types of legal acts—laws and sub-statutory legal acts (Seimas resolutions, Government resolutions, decrees of the President) whose compliance with the Constitution is investigated by the Constitutional Court.

While construing this provision of the Constitution, the Constitutional Court held that from the constitutional principle of a state under the rule of law and other constitutional imperatives arises the requirement to the legislator to pay heed to the hierarchy of legal acts which originates from the Constitution, which means that it is prohibited to regulate the public relations by legal acts of lower power, which may be regulated only by legal acts of higher power, it also means that it is prohibited to establish in legal acts of lower power any such legal regulation, which would compete with the one established in the legal acts of higher power. Taking account of the principle of supremacy of the Constitution, the constitutional principle of a state under the rule of law, the hierarchy of legal acts entrenched in the Constitution, the Constitutional Court, under the Constitution and the Law on the Constitutional Court, enjoys the powers to investigate and adopt a decision on whether any constitutional laws (parts thereof) are not in conflict with the Constitution, whether laws (parts thereof) are not in conflict with the Constitution and constitutional laws, whether sub-statutory legal acts (parts thereof) adopted by the Seimas are not in conflict with the Constitution, constitutional laws, and laws, whether acts (parts thereof) of the President of the Republic are not in conflict with the Constitution, constitutional laws and laws, and whether acts (parts thereof) of the Government are not in conflict with the Constitution, constitutional laws and laws (Constitutional Court ruling of 13 December 2004). It needs to be noted that the Constitutional Court construed that it enjoys the powers to investigate into the compliance of laws adopted by referendum with any act of higher power, *inter alia* (and, first of all) with the Constitution.

Under the Constitution, the Constitutional Court enjoys the powers to investigate the compliance of legal acts with the Constitution and laws irrespective of whether these acts are of individual, or normative character, whether they are of one-time *(ad hoc)* application or of permanent validity. The Constitutional Court enjoys the powers and has to consider and adopt decisions concerning the conformity of any laws and legal acts adopted by the Seimas with the Constitution, and regarding the conformity of any

legal acts of the President of the Republic and any legal acts of the Government with the Constitution and the laws irrespective of the fact whether the legal act is (should be) marked "top secret", "secret", "confidential" or marked in any other way (*inter alia* Constitutional Court ruling of 30 December 2003). Any other different, literal construction of the Constitution would mean that the Constitution, purportedly, tolerates its own disregard, where some legal acts are allowed, the investigation of whose compliance with the Constitution does not fall under control by the Constitutional Court and the verification of their compliance with legal acts of higher power, *inter alia* (and, first of all) with the Constitution, is avoided.

Thus, on the grounds of the provisions entrenched in the Constitution and the official doctrine of the Constitutional Court, the Constitutional Court, while exercising constitutional review, investigates the following:

1) the compliance of laws (parts thereof) with the Constitution;
2) the compliance of laws (parts thereof) with the Constitution and/or constitutional laws;
3) the compliance of sub-statutory legal acts ((a) sub-statutory legal acts (parts thereof) adopted by the Seimas; (b) acts (parts thereof) adopted by President of the Republic; (c) acts (parts thereof) of the Government) with the Constitution, constitutional laws, and laws.

It needs to be noted that the Constitutional Court enjoys the powers to investigate only the compliance of legal acts with the Constitution. The object of constitutional review is always the result of certain institutional law-making decisions (actions), the provisions laid down in some textual form. The Constitutional Court, in its 8 August 2006 decision on dismissing legal proceedings in the case in which it was *inter alia* requested to investigate into the constitutionality of a law, which had not established a legal regulation instead of the legal regulation previously recognised unconstitutional by the Constitutional Court, held that the Constitutional Court also investigates into both the legal regulation that is explicitly, *expressis verbis,* consolidated in legal acts, and the legal regulation which is consolidated in legal acts implicitly and is derived from the explicit legal provisions in the course of construction of law. However, the Constitutional Court, which, under the Constitution, has exclusive powers to investigate and adopt decisions on the consequences of any law-making decisions (actions) of the Seimas, the President of the Republic or the Government—the compliance of legal acts with legal acts of higher power, *inter alia* (and, first of all) with the Constitution, under the Constitution, enjoys no powers to investigate non-adoption of law-making decisions by state institutions (the compliance of legal acts passed by which with legal acts of higher power is investigated by the Constitutional Court)—avoidance or delay to adopt such decisions, as well as failure to act, which is determined by other motives—even though in the legal system there appear gaps or other indeterminacies due to such failure to act. The subjects which have the right to apply to the Constitutional Court cannot dispute the avoidance and delay to adopt such law-making decisions or failure to act, which is determined by other motives, due to which corresponding legal acts have not been passed, including those which

have to be passed so that, by taking account of Constitutional Court acts, one would establish the legal regulation that would be in compliance with the Constitution or other legal acts of higher power.

Under Paragraph 3 of Article 105 of the Constitution, the Constitutional Court also presents conclusions ascribed to its competence:

– whether there were violations of election laws during elections of the President of the Republic or elections of Members of the Seimas: in this case the Constitutional Court shall examine and assess only the decisions made by the Central Electoral Commission or the refusal thereof to examine complaints concerning the violation of laws on elections in cases when such decisions were adopted or other deeds were carried out by the said commission after the termination of voting in the elections of Members of the Seimas or the President of the Republic (Constitutional Court conclusion of 5 November 2004), i.e. the Constitutional Court virtually investigates into the lawfulness of the act of the Central Electoral Commission (whether the Central Electoral Commission has not violated election laws);[5]

– whether the state of health of the President of the Republic allows him to continue to hold office; the Seimas applies to the Constitutional Court on this issue by means of a resolution adopted by a majority vote of more than half of all Members of the Seimas; the resolution of the Seimas must be accompanied by a conclusion of the medical commission which is approved by the Seimas;

– whether international treaties of the Republic of Lithuania are not in conflict with the Constitution: this is the only case when the Constitutional Court exercises *a priori* constitutional review, since, subsequent to an inquiry of the Seimas or the President of the Republic the Constitutional Court may investigate into the compliance of international treaties with the Constitution before they are ratified;

– whether concrete actions of Members of the Seimas and state officials against whom an impeachment case has been instituted are in conflict with the Constitution.

6. **a) Parliament and Government, as the case may be, will proceed without delay to amending the law (or another act declared unconstitutional) in order to bring such into accord with the Constitution, following the constitutional court's decision. If so, what is the term established in that sense? Is there also any special procedure? If not, specify alternatives. Give examples.**

Rulings passed by the Constitutional Court are binding to all state institutions, courts, all enterprises, establishments, and organisations as well as officials and citizens. A ruling of the Constitutional Court, whereby a certain legal act is recognised to be in

[5] Žilys J.: Lietuvos Respublikos Konstitucinis Teismas konstitucinėje sistemoje [The Constitutional Court of the Republic of Lithuania in the Constitutional System] // Lietuvos konstitucinė teisė: raida, institucijos, teisių apsauga, savivalda [The Lithuanian Constitutional Law: Development, Institutions, Protection of Rights, Self-Governance]. Collective Monograph. Vilnius, MRU leidybos centras, 2007, pp. 262-294.

conflict with the Constitution, gives rise to corresponding shift in the legal system. Under Paragraph 1 of Article 107 of the Constitution, a law (or part thereof) may not be applied from the day of official promulgation of the decision of the Constitutional Court that the law in question (or part thereof) is in conflict with the Constitution. Under Article 72 of the Law on the Constitutional Court, all state institutions as well as their officials must revoke the substatutory acts or provisions thereof which they have adopted and which are based on an act which has been recognised as unconstitutional. Decisions based on legal acts which have been recognised as being in conflict with the Constitution or laws must not be executed if they had not been executed prior to the appropriate Constitutional Court ruling went into effect. The power of the Constitutional Court to recognise a legal act or part thereof as unconstitutional may not be overruled by a repeated adoption of a like legal act or part thereof.

The Constitutional Court has held that when the Constitutional Court ruling by which a law (or part thereof) is recognised as contradicting to the Constitution becomes effective, various uncertainties, *lacunae legis,* gaps in the legal regulation, even vacuum may appear within the legal system. Then it is necessary to correct the legal regulation in such a way so that the gaps in the legal regulation and other uncertainties are removed and the legal regulation becomes clear and harmonised (Constitutional Court ruling of 19 January 2005). It is evident that such situations where there occur gaps of legal regulation in the legal system are not to be tolerated from the constitutional point of view, therefore, the legislator has a duty to take action without delay so that the legal acts which were recognised by the Constitutional Court ruling as conflicting with the Constitution, thus as no longer valid, would be corrected (amended so that the newly established legal regulation would not be in conflict with legal acts of higher power, *inter alia* (and, first of all) with the Constitution), and the gaps in the legal regulation would be filled. This constitutional duty of the legislator is entrenched in the jurisprudence of the Constitutional Court (*inter alia* in the Constitutional Court ruling of 9 May 2006). The said vacuum in the legal regulation may be completely removed only after the Seimas makes corresponding amendments and/or supplements of the law. Should more time be needed in order to accomplish this, the Seimas has a duty to establish, by means of a law, a temporary legal regulation.

For quite some time no procedure or terms were established in legal acts, which the subjects should have followed in the course of amendment of the legal acts recognised as conflicting with the Constitution by the Constitutional Court.

Since 2002, the Statute of the Seimas has had a special chapter designed for implementation of the Constitutional Court rulings, conclusions and decisions, which provides for the procedure for implementation of the Constitutional Court rulings by which a certain legal act was recognised as conflicting with the Constitution and concrete terms for doing so. In order to secure that the rulings of the Constitutional Court be properly implemented and that a legal act, which is in conflict with the Constitution, be amended, one of the Deputy Speaker of the Seimas is appointed to be responsible for this procedure at the Seimas. Article 181^2 of the Statute of the Seimas

provides that within a month after the receipt of a ruling of the Constitutional Court in the Seimas, the Legal Department of the Office of the Seimas shall submit to the Seimas Committee on Legal Affairs respective proposals on the implementation of this ruling, and the latter shall consider this ruling not later than within 2 months after the receipt in the Seimas of this ruling. At the Seimas, a corresponding committee or a working group set up for this purpose must, not later than within 4 months, prepare and submit to the Seimas for consideration a draft amending that law (or a part thereof) or any other act (or a part thereof) being passed by the Seimas which is not in compliance with the Constitution. If a draft is complex, the Board of the Seimas may expand the time limit of its preparation, but not exceeding 12 months. It may be proposed that the Government prepare a draft amending the appropriate law (or a part thereof). Drafts for amending unconstitutional laws, prepared in order to implement rulings of the Constitutional Court, are deliberated and adopted in the parliament while following the general procedure of legislation established in the Statute of the Seimas.

The legislator, while passing new or amending and supplementing the valid laws, may not disregard the concept of the provisions of the Constitution and other legal arguments which are set forth in officially published and effective rulings of the Constitutional Court. Thus, while seeking to harmonise a respective legal act with the Constitution, the legislator must invoke the interpretation of the constitutional norms and principles as presented in the ruling of the Constitutional Court, and to take account of the gaps, inconsistencies and other shortcomings of the legal regulation.

It needs to be noted that the Constitutional Court, while seeking to emphasise the necessity to correct unconstitutional legal acts and amend them so that the newly adopted legal regulation would be in line with the Constitution, has underlined that the Constitution does not tolerate any such situation where a corresponding law-making subject (*inter alia* the legislator) avoids or delays the adoption of corresponding laws and other legal acts whereby, while following the official concept of the provisions of the Constitution, which is set forth in Constitutional Court rulings, the legal regulation that was recognised to be in conflict with legal acts of higher power, *inter alia* (and, first of all) the Constitution, would be respectively corrected. Such situation is especially not to be tolerated, when, after upon the entry into force of a Constitutional Court ruling, which recognised a certain legal act (part thereof) to be in conflict with the Constitution (or another legal act of higher power), there appears a *lacuna legis*, a legal gap, i.e. when certain social relations remain legally unregulated, although, when heeding the imperatives of the consistency and inner uniformity that arise from the Constitution and while account is taken of the content of these social relations, they must be legally regulated (Constitutional Court decisions of 8 August 2006 and 1 February 2008). In this report one has already mentioned the Constitutional Court decision of 8 August 2006, which was adopted in a case initiated by one of local courts, which had disputed a law, whose provision had been recognised as anticonstitutional by the Constitutional Court, however, the legislator had not undertaken any steps for its correction. The court that had applied to the Constitutional Court had doubts whether such an activity of the legislator, where it had not taken any actions in order to

implement the ruling of the Constitutional Court (which had recognised that a corresponding legal acts was in conflict with the Constitution), and due to this the legal acts recognised as being in conflict with the Constitution had not been amended, while there had occurred a legal gap in the legal system of the state, was not in conflict with the Constitution. The Constitutional Court in this constitutional justice case reminded once again that such a situation may not be tolerated from the constitutional point of view, however, it held that it did not enjoy powers to investigate into the absence of actions (failure to act) of the subject and assess something that did not exist (a legal act, which could be assessed by the Constitutional Court, had not been adopted at all), since the legal act that had been recognised to be in conflict with the Constitution had already been investigated at the Constitutional Court and the case on the same subject a second time was impossible.

In actual practice there are also such situations where the legislator is granted more time than provided for in the Statute of the Seimas so that the corresponding amendments to the legal act (part thereof) recognised as conflicting with the Constitution could be made. This is possible when the Constitutional Court, in the same ruling wherein the legal acts is recognised as being not in line with the Constitution, postpones the official publishing of its own ruling. It means that the investigated legal regulation continues to be in force until the official publishing of the Constitutional Court ruling, even though it was recognised to be in conflict with the Constitution. The legislator, while being aware of the fact that from a certain day this legal regulation will become invalid, has an opportunity to discuss and prepare for its amendment in advance. The Constitutional Court may postpone the official publishing of its ruling if it is necessary to give the legislator certain time to remove the *lacunae legis* which would appear if the relevant Constitutional Court ruling was officially published immediately after it had been publicly announced in the hearing of the Constitutional Court and if they constituted preconditions to basically deny certain values defended and protected by the Constitution. The said postponement of official publishing of the Constitutional Court ruling is a presumption arising from the Constitution in order to avoid certain effects, unfavourable to the society and the state as well as the human rights and freedoms, which might appear if the relevant Constitutional Court ruling was officially published immediately after its official announcement in the hearing of the Constitutional Court and if it became effective on the same day after it had been officially published (Constitutional Court rulings of 19 January 2005 and 23 August 2005). Thus, while taking account of the fact that in order to remove some legal gaps objectively more time is needed than provided for in the procedure commonly applied, also in order to avoid situations, which might disturb the governance of the state in essence or which otherwise deny certain values defended and protected by the Constitution, or which would require especially big expenditures of the state budget, the legislator is granted more time for consideration and amendment of the legal regulation which was recognised as being in conflict with the Constitution. The Constitutional Court has postponed the official publishing of its rulings more than once. For example, it was done in the Constitutional Court ruling of 23 August 2005 (in that case the Constitutional Court was considering the constitutionality of the law on the restoration of citizens' rights of ownership to the existing real property and recognised that the

provisions regulating payment of monetary compensations for previously held property were in conflict with the Constitution) because it decided that the implementation of this ruling is related with formation of the state budget, with corresponding redistribution of financial resources of the state, and, if the ruling had been published at once, there might have appeared such indeterminacies and legal gaps in the legislative regulation of ownership rights to the existing legal property due to which the restoration of the rights of ownership to the existing property would be disturbed in essence, or even it could temporarily be stalled and the state would not be able to perform the undertaken obligations properly and in time. The Constitutional Court postponed the official publishing also in one of its recent cases, in which the ruling was adopted on 29 June 2010. In this case the provisions regulating calculation and payment of state pensions of judges were recognised as being in conflict with the Constitution. The Court postponed the official publishing of the ruling for almost half a year, noting that, if this ruling had been officially published in this case right after its official announcement in the Constitutional Court hearing, there would have appeared a vacuum in the legal regulation of state pensions of judges, which would disturb the awarding of state pensions of judges in essence.

The duty arises to the legislator to correct the corresponding legal act not only after the Constitutional Court recognises that certain provisions of a legal act are non-compliant with the Constitution, but also after it holds that a corresponding legal act is in conflict with the Constitution due to the fact that this legal act has not established the legal regulation, which, while heeding the imperatives of consistency and inner uniformity of the legal system stemming from the Constitution and taking account of the content of these social relations, must be established precisely in that legal act, since this is required by the Constitution (or any other legal act of higher power with respect to which the compliance of a legal act of lower power is being assessed). In such a case of legislative omission the Constitutional Court has emphasised that this situation is always the consequence of an action (but non inaction) of the law-making subject that has issued the respective legal act, therefore, this law-making subject has a duty to correct such a situation without delay.

It needs to be noted that after the Constitutional Court adopts a ruling whereby a corresponding legal norm is recognised to be in conflict with the Constitution not to its full extent, but only in part of its content, the law-making subject often does not have to amend the said legal act (part thereof), since only a certain part of normative content of the provision is removed from the legal system, whereas the application of this provision to the extent that is not in conflict with the Constitution may be further continued.[6] Still, it is most often expedient and desirable that the investigated legal norm be corrected because of legal clarity and precision, by harmonising it with the interpretation of the provisions submitted in the ruling of the Constitutional Court,

[6] Staugaitytė V.: Konstitucinio Teismo nutarimų tipai ir jų poveikio teisės sistemai bei teisės taikymo praktikai ypatumai [The Types of Constitutional Court Rulings and Peculiarities of Their Impact on the Legal System and Practice of Application of Law] // Konstitucinė jurisprudencija, 2007, No. 4, pp. 254-281.

however, it is not mandatory, if the legislator believes that even after the narrowing of the extent of the norm it continues to reflect the legislator's intention and, while applied to the extent not conflicting with the Constitution, it properly regulates those legal relations to which it was designed.

Having analysed the statistics of cases of the Constitutional Court of the Republic of Lithuania till September 2010, it is clear that out of 144 rulings, which recognised legal acts as conflicting with the Constitution, 70 percent have been implemented. It should be noted that this number also includes those rulings of the Constitutional Court, where the one-and-a-half year term from their adoption has not elapsed. Therefore, it is possible to assert that rulings of the Constitutional Court of Lithuania are implemented successfully enough.

6. **b) Parliament can invalidate the constitutional court's decision: specify conditions.**

Paragraph 2 of Article of 107 of the Constitution 107 provides that the decisions (rulings on the compliance of the considered legal acts with the Constitution, decisions, and conclusions) of the Constitutional Court on issues ascribed to its competence by the Constitution shall be final and not subject to appeal. Paragraph 2 of Article 72 of the Law on the Constitutional Court entrenches overall compulsoriness of acts of the Constitutional Court: they are binding to all state establishments, courts, all enterprises, establishments, and organisations as well as officials and citizens. The officially published acts of the Constitutional Court must be executed without delay. All subjects of law, including the legislator, are bound by the previously adopted rulings of the Constitutional Court. The power of the Constitutional Court to recognise a legal act or part thereof as unconstitutional may not be overruled by a repeated adoption of a like legal act or part thereof (Paragraph 5 of Article 72 of the Law on the Constitutional Court).

Thus, the parliament, as any other state institution, under no conditions may recognise that a Constitutional Court decision is invalid. The principle of overall compulsoriness obligates the parliament, as well as all other subjects, to execute the Constitutional Court ruling without delay (unless the ruling itself establishes otherwise), and does not give the right to the parliament to circumvent the ruling adopted by the Constitutional Court, by repeatedly adopting the legal act (part thereof) of identical content.

7. **Are there any institutionalized cooperation mechanisms between the Constitutional Court and other bodies? If so, what is the nature of these contacts / what functions and powers shall be exerted on both sides?**

Legal acts do not provide for any official institutionalised co-operation mechanisms between the Constitutional Court and other bodies. However, in some rare situations there exist unofficial inter-institutional ties.

II. RESOLUTION OF ORGANIC LITIGATIONS BY THE CONSTITUTIONAL COURT

In every constitutional democracy the control of state institutions is the cornerstone for seeking to prevent abuse of powers, attempts to expand one's powers at the expense of another institution and to raise the institutional interest above human rights and freedoms. Therefore, the relation of the Constitutional Court with state institution is disclosed not only by its empowerments to verify the compliance of adopted legal acts with the supreme law of the country—the Constitution—but also by the role of the Constitutional Court in maintaining the balance among state institutions, in supervising state institutions that they would perform their functions within the limits ascribed to them. The Constitution establishes to each state institution the competence corresponding to its purpose, where the concrete content of the competence depends on the place of this institution in the general system of branches of power and on the relation of this institution with other branches of power, and on the place of this institution among other state institutions as well as the relation of its powers with those of other institutions. After the powers of a concrete branch of state power have been directly established in the Constitution, then a certain institution of state power may not take over the said powers from another state institution, it may not transfer or waive them; such powers may not be amended or limited by means of a law (*inter alia* Constitutional Court rulings of 23 August 2005, 6 June 2006 and 2 March 2009).

However, self-dependence of state institutions and separation of their functions does not mean that they are not related with one another. The model of reciprocity among state powers entrenched in the Constitution is also described by the reciprocal control and balance of state powers (institutions thereof), which does not allow for one state power to dominate in respect of the other (others), and by their cooperation, of course, without overstepping the limits established by the Constitution—without interfering in the implementation of powers of other state power (Constitutional Court ruling of 9 May 2006). The Constitutional Court has noted that, when general tasks and functions of the state are being accomplished, the activities of state institutions are based on their co-operation, therefore their interrelations are to be defined as inter-functional partnership (Constitutional Court ruling of 10 January 1998). When there exists interaction among state institutions, certain their mutual disputes are unavoidable. Such disputes may be influenced by the circumstance that in different state institutions there are representatives of different political views, lack of skills of search for compromise, or sometimes ambiguous and different interpretation of the norms, which are entrenched in the Constitution, regarding definition of the main features of functioning of state institutions. The Constitutional Court, while securing the supremacy of the Constitution in the legal system, alongside, performs a peculiar role of the supervisor, while seeking to secure proper functioning of branches of state power. The issues of powers of state institutions, delimitation of powers of the Government and the Seimas, that of the Seimas and the President of the Republic,

their interrelations, are recurring time and again within the range of attention of the Constitutional Court in the course of consideration of petitions of petitioners.

1. **What are the characteristic traits of the contents of organic litigations (legal disputes of a constitutional nature between public authorities)?**

In the legal system of Lithuania the notion "organic litigation" *(French – conflits juridiques de nature organique*) is not employed. Also, there is not any established procedure applicable for consideration of such litigation, there are no provided subjects, who can be parties to such litigations, therefore, it is not an easy task to describe traits of such litigations. However, it would be a mistake to assert that such disputes are not settled in Lithuania at all. Although the provisions of the Constitution in which the competence of the Constitutional Court is entrenched, do not provide *expressis verbis* the empowerment of the Constitutional Court to decide judicial disputes regarding the competence of state institutions, the Constitutional Court has had to consider complex issues of relations of state institutions more than once. It is done while implementing the main competence of the Constitutional Court— exercising control of constitutionality (lawfulness) of legal acts.

Such constitutional disputes are most often to be related with delimiting the competence of state institutions and the implementation of the empowerments and their limits as defined by the Constitution. The character of the cases in which one has to settle mutual disputes between states institutions depends on the petitioner, who, while applying to the Constitutional Court, formulates the limits and extent of the investigation and raises concrete issues. While analysing the petitions received at the Constitutional Court, it is clear that in some cases a concrete request is formulated, by indicating not only articles of the Constitution, but also some aspects of constitutional regulation which should be touched upon in the course of consideration of the case, while in other cases the request is somewhat more abstract, raising a certain problem and giving the freedom to the Constitutional Court itself to find a solution.

The majority of the disputes between state institutions, settled by the Constitutional Court, are related with the interpretation and application of the constitutional principle of separation of powers. The petitions requesting to investigate the constitutionality of legal acts wherein the powers of state institutions are entrenched and their interrelations are regulated, this principle may be indicated directly or be implicit. It is clear that it is possible to settle the dispute arisen between institutions and find the answers to the questions that brought them to the disagreement only in the context of the constitutional structure of branches of powers, therefore, the constitutional principle of separation of powers is the essential basis point.

Disputes between state institutions are quite often political in character, because of domination of different political forces in separate state institutions. Petitions of state institutions to the Constitutional Court are sometimes even employed as a legal instrument of political struggle, for example, when the opposition seeks to prove that

those in power adopt acts which are not in line with constitutional norms, or when it seeks to prevent adoption of certain decisions. If such a dispute is substantiated by legal arguments and having referred it to the Constitutional Court, it becomes a legal dispute, thus securing the superiority of law in governance of the state. The fact that a political dispute becomes a legal dispute is a guarantee that inter-institutional relations will not lead to a dead-end, where institutions opposed to one another solve their disputes by resorting to any measures.[7]

2. Specify whether the Constitutional Court is competent to resolve such litigation.

As mentioned, in Articles 102 and 105 of the Constitution, which define the competence of the Constitutional Court and its the powers to investigate the compliance of legal acts with the Constitution, the competence of the Constitutional Court to resolve organic litigations is not mentioned. Nor does the Law on the Constitutional Court provide for such competence, either. Neither the Constitution, nor the Law on the Constitutional Court provides for any special procedures for the cases where one investigates issues of the powers of state institutions, establishment of their limits, and issues of interrelations among state institutions. In the Lithuanian legal system the conception of the Constitutional Court as the main guardian of the Constitution, but not as an arbiter of disputes among institutions, is entrenched. However, also when it secures the supremacy of the Constitution in the legal system, the Court cannot evade resolution of the disputes occurring among the institutions whose activities' grounds are established in the Constitution.

In Lithuania, these disputes are settled in the course of decision of the compliance of concrete legal acts with the Constitution and laws. In the broad sense, the Constitutional Court resolves the issues of powers and functioning of state institutions in every case, since all the rulings adopted by the Constitutional Court are related with the issue of limits of power—all the rulings make the limits of the powers of the institution, which adopted the concrete act, more precise, all the rulings exert direct influence on the functions performed by state institutions; in the narrow sense, the Constitutional Court secures the limits of constitutional functioning of state institutions in the course of consideration of the cases in which the issue is decided whether the disputed legal act (part thereof) is in compliance with the part of the Constitution in which the organisation, functioning and interaction of state institutions are established.[8] It is in these cases where one directly considers the proportion of empowerments of state institutions and whether the limits of their empowerments are fairly established. Namely the content of the dispute, delimitation of the area regulated by the Constitution allow to speak about the activity of the Constitutional Court in protecting the competence of state institutions.

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[7] Jarašiūnas E.: Valstybės valdžios institucijų santykiai ir Konstitucinis Teismas [The Constitutional Court and Relations Among State Institutions]. Vilnius: TIC, 2003, p. 176.
[8] *Ibid*., p. 58.

In fact, it is not important whether disputes among state institutions regarding their empowerments and competence constitute the formal area of jurisdiction of the Constitutional Court. In each situation one is seeking the same objective—functioning of the model of state power entrenched in the Constitution and the constitutional balance among the institutions.

3. **Which public authorities may be involved in such disputes?**

See answer to question 4 of this section.

4. **Legal acts, facts or actions which may give rise to such litigations: do they relate only to disputes on competence, or do they also involve cases when a public authority challenges the constitutionality of an act issued by another public authority? Whether your constitutional court has adjudicated upon such disputes; please give examples.**

In Lithuania, the Constitutional Court considers mutual disputes of state institutions by investigating the compliance of such acts with the Constitution and/or laws, in which the powers of state institutions, their limits, functions performed, interaction among institutions are established in an ambiguous manner, or that of such legal acts, which show how the institutions use the power ascribed to them and whether they act within the limits of their competence (for example, the Law on Local Self-government which defines division of competence between state power and local authorities, the Law on the Government etc.). Regarding such legal acts, both political state institutions and courts considering concrete cases may apply to the Constitutional Court. The main purpose of the Constitutional Court in such a case is consideration of the issue of constitutionality of the disputed legal act, whereas the settlement of the dispute on limits of competence or exceeding of powers will be the consequence of such investigation.

There are also quite frequent situations when, while defending the interests of the state or the public, one of state institutions applies to the Constitutional Court after the said institution due to certain reasons (exceeding of powers, interference with the competence of another institution) has had doubts as to the constitutionality of a legal act adopted by another institution, however, such petitions of institutions are not directly named as mutual disputes of institutions. The Constitutional Court has received quite a few petitions of the Seimas or groups of Members of the Seimas requesting to investigate the lawfulness of a resolution adopted by the Government (for example, one of the recently heard constitutional justice cases was initiated subsequent to the petition of the Seimas requesting to investigate the compliance of Government resolutions “On Assenting to a Draft Agreement on Purchase and Sale of 34 Percent of the Shares (Which Belong to the State by Right of Ownership) of the Joint-Stock Company ‘Lietuvos dujos’, Annexes to this Agreement, as well as to a

Draft Agreement of Shareholders" and "On a Draft Supplement to the Long-Term Gas Supply Agreement Between the Joint-Stock Company 'Lietuvos dujos' and the Public Joint-Stock Company 'Gazprom'" with the Constitution; Constitutional Court ruling of 26 February 2010) or the compliance of a decree of the President of the Republic with the Constitution and/or laws (for example, subsequent to the petition of a group of Members of the Seimas the lawfulness of the Decree of the President of the Republic "On Awarding Citizens of the Republic of Lithuania and Citizens of Foreign States with Orders and Medals of the State of Lithuania on the Occasion of the Day of State (Coronation of King Mindaugas of Lithuania)" was investigated; Constitutional Court ruling of 7 September 2010). However, such petitions are not frequent: during the entire period of activity of the Constitutional Court, 4 petitions from the Seimas *in corpore* regarding the compliance of legal acts adopted by the President of the Republic with the Constitution and 3 petitions regarding the lawfulness of legal acts adopted by the Government have been received. Legal acts adopted by the Government are more frequently disputed at the Constitutional Court by groups of Members of the Seimas, since, under the Constitution, also not less than 1/5 Members of the Seimas may apply to the Constitutional Court (in all, 45 such petitions have been received). The Government disputes laws and other acts adopted by the Seimas, and the President of the Republic disputes legal acts issued by the Government only in rare cases (in all, 2 petitions from the President of the Republic and 3 petitions from the Government have been received).

Concrete rulings of the Constitutional Court have disclosed various aspects of the compliance of the powers of the parliament, the President of the Republic or the Government, of the functions discharged by these institutions, of the regulation of their interrelations with the Constitution. When the disputes among state institutions are indirectly resolved, in the jurisprudence of the Constitutional Court in the course of adoption of decisions regarding the compliance of corresponding legal acts with the Constitution, the doctrine of their interrelations is formed:

– stating as to which form of governance the model of structure of supreme state institutions and their interrelations is to be ascribed: for example, in its ruling of 10 January 1998, the Constitutional Court, while investigating, subsequent to the petition of the Government, the compliance of a resolution adopted by the Seimas, whereby the 1997-2000 Programme of the Government was confirmed, with the Constitution, noted that "Under the competence of state institutions as established by the Constitution of the Republic of Lithuania, the governance model of the State of Lithuania is to be attributed to the parliamentary republic governance form. Alongside, one should note that the governance form of our state is also characteristic of certain peculiarities of thus termed mixed (half-presidential) form of governance. This is reflected in the powers of the Seimas, those of the head of the state—the President of the Republic—and those of the Government, as well as in the legal arrangement of their reciprocal interaction. In the Lithuanian constitutional system the principle of the responsibility of the Government to the Seimas has been established which determines a respective way of Government formation";

– in defining the principles of interaction among institutions: for example, in the same ruling of 10 January 1998, the Constitutional Court noted that "When general tasks and functions of the state are being accomplished, the activities of state institutions are based on their co-operation, therefore their interrelations are to be defined as inter-functional partnership. One of the ways to ensure co-operation between state institutions is the principle of responsibility of the Government to the Parliament, which is consolidated in the constitutions of most European states";

– in establishing the limits of empowerments of state institutions: for example, in its jurisprudence the Constitutional Court has held that in Lithuania delegated legislation is not allowed and the Government does not have the right to adopt laws, but only sub-statutory legal acts; that it is prohibited to transfer, take over or waive the empowerments of sate authority that have been directly established in the Constitution, it is prohibited to limit or change them by means of laws or other legal acts, save amending the Constitution itself;

– in delimiting the powers of the Seimas and the Government in the formation and execution of the state budget: for example, in the ruling of 14 January 2002 it was held that, while drafting (forming) the state budget as well as while considering and approving it, the powers of the Seimas as a legislative body and the powers of the Government as an executive body are separated: preparation (formation) of a draft state budget is the right and duty of the Government alone, whereas only the Seimas has the competence to consider the draft state budget submitted by the Government and approve it by law; acts issued by the executive bodies can only deal with the execution of the state budget and they cannot compete with the law on the state budget let alone change it;

– in construing the powers of the Government and the President of the Republic in the area of conducting foreign policy: for example, in the ruling of 17 October 1995 it was noted that not only the President of the Republic, but the Government as well, has the concrete authorisations to conclude international treaties, as without having them it is impossible to implement foreign policy, however, only the President of the Republic is entitled to submit international treaties to the Seimas for ratification and only such treaties have the power of law in the legal system of the state;

– in defining the powers of the legislature and the judiciary in the carrying out the impeachment procedure: in the conclusion of 31 March 2004 it was noted that only the Constitutional Court can decide whether by concrete actions of the official, against whom the impeachment procedure was initiated, the Constitution was grossly violated, whereas the powers to decide the issue of revocation of the mandate of this official or his removal from office belong to the Seimas;

– finally, in delimiting the powers of state institutions and local authorities: for example in the ruling of 24 December 2002 it was noted that the in Lithuania two systems of public authority are distinguished: state governance and local self-government; that the functions attributed to municipalities by the Constitution may not be bound by state institutions.

One of the most prominent examples of the jurisprudence of the Constitutional Court, which has been quoted in this report more than once and which has stirred a number of discussions among scholars, regarding disputes among state institutions, is the Constitutional Court ruling of 10 January 1998. The Constitutional Court was requested to investigate whether a Seimas resolution whereby the Programme of the Government has been assented was not in conflict with the Constitution in the aspect that the said Seimas resolution had assented to the Programme of the Government in which the Government activities had been provided for until the end of the term of office of the Seimas, but not until the expiration of powers of the President of the Republic, even though, under the Constitution, upon election of a new President of the Republic the working Government returns its powers to the newly elected President. The Constitutional Court, while remaining an impartial arbiter in the dispute at the intersection of interests of state institutions and while analysing the legal regulation for the relations of the Government formation, defined the limits of powers of the legislature and the executive in the process of forming the Government. In that constitutional justice case there was an issue raised regarding the powers of the newly elected Head of State to newly select the candidature of the Prime Minister and to submit it to the Seimas for approval. The Constitutional Court construed that upon new election of the President of the Republic and after the Government returns its powers to him, as provided for in Paragraph 4 of Article 92 of the Constitution, the President, while seeking to verify if the incumbent Prime Minister still enjoys the confidence of the Seimas, submits to the Seimas the same candidature of the Prime Minister, whom the Seimas has already approved previously. If the parliament confirms its confidence in the incumbent Prime Minister, the Government continues to pursue its activities and a new Prime Minister is not appointed. The Court emphasised that in the course of formation of the Government two subjects take part: the President of the Republic, who submits the candidature of the Prime Minister to the Seimas, and the Seimas, which approves this candidature and assents to the Programme of the Government. Therefore, upon expiry of the powers of one of the subjects that formed the Government, the Government also returns its powers. However, the Court construed that it is entrenched in the norms of the Constitution that the influence of these subjects in the formation of the Government has different significance. The President of the Republic selects the candidatures of the Prime Minister and ministers, whereas the Seimas, by assenting to the Programme of the Government, grants the Government the powers to act. Therefore, after the term of office of the Seimas is over, a new Government is formed, whose programme is assented to by the newly elected Seimas. Meanwhile, after the election of the new President of the Republic, the Government which still enjoys the confidence of the Seimas can continue to act, whereas the returning of powers of the Government to the newly elected President of the Republic only gives him the right to check whether the Seimas continues to have confidence in the existing Government, but not to appoint a new Prime Minister. The President of the Republic has some influence on the personal composition of the Government, but he cannot decide whether such a

Government can act—this is provided for in the Constitution.[9] In addition, the Constitution does not provide that upon election of a new President of the Republic, the Government must resign, which is not the case after elections of the Seimas. The Constitutional Court decided that such constitutional establishment of powers and mutual relations between state institutions in the formation of the Government reflects the principle of separation of and balance among branches of state power as well as the model of parliamentary governance to which Republic of Lithuania is to be ascribed. In this case the substantive provisions of the ruling of Constitutional Court stating that the questionable resolution of the Seimas was not in conflict with the Constitution performed an auxiliary, "supporting" role in the context of interpretation of the powers of state institutions.[10]

In addition, one should mention the well-known case of impeachment of the President of the Republic in which, on 31 March 2004, the Constitutional Court submitted a conclusion on the compliance of actions of the President of the Republic with the Constitution. In this case the Constitutional Court not only resolved the conflict between state institutions—the Seimas and the President of the Republic—but also, while assessing the actions of the President of the Republic, made use of the opportunity to construe some provisions of the Constitution and delimit the powers of the Seimas, as an institution of the legislature, and those of the Constitutional Court, as an institution of the judiciary, in the impeachment proceedings of state officials. In this case the Constitutional Court emphasised that even though impeachment is a special parliamentary procedure, two institutions—the Seimas and the Constitutional Court—enjoy powers in impeachment proceedings. Having begun the impeachment proceedings, the Seimas has the duty to apply to the Constitutional Court, since only the Constitutional Court can decide whether the Constitution was violated by concrete actions of the state official. However, the Constitutional Court, even having held that the Constitution was violated grossly, cannot decide whether to remove this official from office. This must be done by the Seimas after it has received a conclusion of the Constitutional Court. As it was noted in the said conclusion of the Constitutional Court the Seimas, when deciding whether to remove the President of the Republic, may not deny, change, nor question the conclusion of the Constitutional Court; the conclusion of the Constitutional Court that concrete actions of the President of the Republic are in conflict (or are not in conflict) with the Constitution are binding on the Seimas in the aspect that, under the Constitution, the Seimas does not enjoy powers to decide whether the conclusion of the Constitutional Court is grounded and

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[9] Sinkevičius V.: Vyriausybės įgaliojimų grąžinimo išrinkus Respublikos Prezidentą konstitucinė doktrina: kai kurie argumentavimo aspektai [The Constitutional Doctrine of Returning of Powers by the Government upon Election of the President of the Republic: Some Aspects of Argumentation] // Jurisprudencija, 2009, t. 4 (118), p. 69.

[10] Kūris E.: Politinių klausimų jurisprudencija ir Konstitucinio Teismo *obiter dicta*: Lietuvos Respublikos Prezidento institucija pagal Konstitucinio Teismo 1998 m. sausio 10 d. nutarimą [The Jurisprudence of Political Issues and the *Obiter Dicta* of the Constitutional Court: The Institution of the President of the Republic of Lithuania According to the Constitutional Court Ruling of 10 January 1998] // Politologija, 1998, t. 1, pp. 3-94.

lawful—the legal fact that the actions of the President of the Republic are in conflict (or are not in conflict) with the Constitution is established only by the Constitutional Court. According to E. Jarašiūnas, a former Justice of the Constitutional Court, this conclusion of the Constitutional Court expressed one's seeking to strengthen the legal element and to reveal the meaning of a state under the rule of law in the impeachment procedure.[11]

5. Who is entitled to submit proceedings before the Constitutional Court for the adjudication of such disputes?

The subjects who may apply to the Constitutional Court with a petition requesting to investigate the conformity of a legal act with the Constitution are specified in Article 106 of the Constitution. The Government, not less than 1/5 of all the Members of the Seimas, and the courts have the right to apply to the Constitutional Court concerning the conformity of laws and other acts of the Seimas with the Constitution; not less than 1/5 of all the Members of the Seimas and the courts have the right to apply to the Constitutional Court concerning the conformity of acts of the President of the Republic with the Constitution and the laws; and not less than 1/5 of all the Members of the Seimas, the courts, as well as the President of the Republic have the right to apply to the Constitutional Court concerning the conformity of acts of the Government with the Constitution and the laws. Although the said constitutional provisions do not include a direct mention that the entire Seimas as an institution may apply to the Constitutional Court, such a conclusion stems from a systemic construction of provisions of the Constitution, *inter alia* from Paragraph 4 of Article 106 of the Constitution, wherein it is provided that the resolution of the Seimas asking for an investigation into the conformity of an act with the Constitution shall suspend the validity of the act. Thus, undoubtedly, the Seimas *in corpore* also has the powers to apply to the Constitutional Court.

It has been mentioned that the Constitution does not *expressis verbis* provide that the Constitutional Court shall investigate mutual disputes of state institutions; nor does it provide for any special procedures for investigation of such disputes or any special circle of subjects that may submit proceedings before the Constitutional Court for the adjudication of such disputes. All the subjects specified in Article 106 of the Constitution may, in their petitions, also raise a question of investigation and assessment of such disputes which will be answered by assessing the conformity of a concrete legal act with the Constitution and/or the laws.

[11] Jarašiūnas E.: Lietuvos Respublikos Konstitucinis Teismas ir aukštųjų valstybės pareigūnų apkalta: kelios aktualios problemos [The Constitutional Court of the Republic of Lithuania and Impeachment of High Ranking State Officials: Some Important Problems] // Jurisprudencija. 2006, t. 2 (80), pp. 34-48.

6. **What procedure is applicable for the adjudication of such dispute?**

As it has been mentioned, neither the Constitution, nor the Law on the Constitutional Court provide for a separate special procedure for consideration of disputes between state institutions. Such disputes are adjudicated according to the common procedure by investigating the conformity of a concrete legal act with the Constitution and/or the laws.

7. **What choices are there open for the Constitutional Court in making its decision (judgment). Examples.**

Since, in Lithuania, mutual disputes of institutions are adjudicated by investigating the conformity of a concrete legal act with the Constitution, the Constitutional Court, having considered a constitutional justice case, may make one of the two following decisions: to recognise that the disputed legal act (part thereof) is in conflict with the Constitution, or to recognise that the disputed legal act is not in conflict with the Constitution. Settlement of a mutual dispute between state institutions is not a goal for the Constitutional Court in the considered case, rather it is an attendant consequence. The Constitutional Court has held more than once that a ruling of the Constitutional Court is integral and that the resolving part of a ruling is based upon the arguments of the part of reasoning. Most frequently, namely in the reasoning part of a Constitutional Court ruling one may find an answer to the question that has caused the dispute between the institutions.

While considering the cases wherein the problem of interrelations of state institutions is raised, the Constitutional Court seeks to delimit functions ascribed to a concrete state institution, to clearly establish powers of each state institution and to define the scope of rights and duties of the institution provided for by the Constitution and the laws, as well as to precisely describe the mechanism of interrelationship of state institutions. In a concrete case, the Constitutional Court decides on the question whether the limits of powers of the corresponding state institutions, which are entrenched in the Constitution, have been violated, and makes a corresponding decision. Alongside, the Court frequently holds that one has also violated the constitutional principle of a state under the rule of law, the principle of separation of powers, as well as those provisions of the Constitution wherein the competence of state institutions is defined. For example, in one of the most recent rulings of the Constitutional Court, that of 7 September 2010, wherein the institute of state awards was analysed, the Constitutional Court, while investigating the conformity of the decree of the President with the Constitution, delimited the competence of the Seimas and President in the area of state awards and held that the law which regulated the relations of state awards, to the extent that it provided for the powers of the Presidium of the Parliament to grant state awards, was in conflict with the provision of Item 22 of Article 84 of the Constitution, whereby the President of the Republic shall confer state awards, Paragraph 2 of Article 5 (state power shall be limited by the Constitution), the constitutional principle of a state under the rule of law.

8. Ways and means for implementing the Constitutional Court's decision: actions taken by the public authorities concerned afterwards. Examples.

No special procedure is provided for implementation of namely such Constitutional Court rulings wherein mutual disputes between state institutions are decided. Such Constitutional Court rulings are implemented according to the common procedure: a corresponding law-making subject, an act adopted by whom has been recognised as anti-constitutional, takes the measures in order the legal regulation, entrenched in that legal act, be changed, if this is required by the Constitutional Court ruling. Depending on what amendments of a legal act are necessitated by the adopted Constitutional Court ruling, for improvement of the legal act, various work groups may be formed and specialists of different fields may be consulted. Implementing Constitutional Court rulings, a legal act or a certain part thereof may be amended, corrected or supplemented, or a new legal act may be adopted.

In the situations where the Constitutional Court adopts a conclusion on the issues ascribed to its competence, the Seimas, on the grounds of the Constitutional Court conclusion, is obliged to adopt a final decision. For instance, in the already mentioned case of the impeachment proceedings against the President of the Republic initiated by the Seimas, after the Constitutional Court had established gross violations of the Constitution committed by the actions of the President of the Republic (Constitutional Court conclusion of 31 March 2004), the Seimas, on 6 April 2004, removed the President of the Republic from office, thereby implementing the conclusion passed by the Constitutional Court. Meanwhile, in one of the most recent cases, after the Constitutional Court adopted the conclusion in the impeachment proceedings against two Members of the Seimas and recognised that, by their actions, both Members of the Seimas had grossly violated the Constitution and breached the oath of the Seimas Member (Constitutional Court conclusion of 27 October 2010), at the 11 November 2010 sitting, the Seimas, by secret ballot, revoked the mandate of one Member of the Seimas, whereas left that of the other valid, irrespective of the fact that the actions of the latter Member of the Seimas had been also recognised by the Constitutional Court to be in conflict with the Constitution.

III. ENFORCEMENT OF CONSTITUTIONAL COURT'S DECISIONS

The reasoned and well-grounded Constitutional Court decisions, wherein the conformity of a corresponding legal act with the Constitution is assessed, may not exist only on paper or, at best, in scientific discussions. The constitutional jurisprudence is, first of all, intended for reading and construction by courts and law-making institutions, rather than scientists, in order to avoid anti-constitutional legal acts in the legal system of the state. The Constitutional Court has the empowerments to recognise a disputed legal act to be in conflict with the Constitution and, in this way, to remove it from the legal system of the state; however, it may not correct any anti-constitutional legal act, change the faulty provisions thereof, nor may it repeal such an act. This is a duty of the law-making subject that adopted the legal act which has been recognised as being in conflict with the Constitution.

The Constitution does not directly provide for any legal means which would obligate the institutions concerned to immediately implement Constitutional Court decisions and which would allow to avoid the emergence of a legal vacuum or any other undesirable effects, which may occur due to the abrupt removal of the norms which conflict with the Constitution from the legal system.

Implementation of final acts of the Constitutional Court, especially of those which recognise one or another legal act as being in conflict with the Constitution, depends upon the establishment of the moment of non-validity of the legal act. In Lithuania, an act which has been recognised to be in conflict with the Constitution may not be applied (thus, actually, loses its legal power) from the day of official publishing of the Constitutional Court ruling. In other words, the power of final acts of the Constitutional Court as regards the conformity of legal acts with the Constitution is only prospective (Constitutional Court decision of 13 May 2003). Such a system of constitutional control aims at strengthening the trust of the public in law, creating the sense of legal security and preserving respect for the existing legal system.[12] It is true that the said rule is not absolute: the legal regulation which has been recognised as anti-constitutional by the Constitutional Court ruling also will not be applied to legal relations formed before the adoption of the said ruling once a concrete case has been initiated in the courts of general jurisdiction or specialised courts. Such a Constitutional Court ruling whereby a legal act of individual application is recognised as being in conflict with the Constitution should also have a retroactive effect (e.g., a decree of the President on Granting Citizenship, see the 30 December 2003 Ruling of the Constitutional Court on the Compliance of President of the Republic of Lithuania

[12] Lapinskas K.: Konstitucinės priežiūros institucijų sprendimų realizavimo problemos [Issues of Implementation of Decisions Made by Institutions of Constitutional Supervision] // Konstitucinės priežiūros institucijų sprendimų teisinės prigimties, galių and realizavimo problemos [Issues of Legal Nature, Powers and Implementation of Decisions Made by Institutions of Constitutional Supervision]. Vilnius, 1995, pp. 43-54.

Decree No. 40 "On Granting Citizenship of the Republic Lithuania by Way of Exception" of 11 April 2003 with the Constitution, whereby the said decree of the President of the Republic, to the extent that it provided that citizenship of the Republic Lithuania, by way of exception, was granted to Jurij Borisov, born on 17 May 1956 in Russia, residing in Lithuania, was recognised to be in conflict with the Constitution, whereas on the grounds of the said ruling the unlawfully granted citizenship of the Republic of Lithuania was revoked).

It needs to be noted that those final acts of the Constitutional Court whereby legal acts are recognised as not being in conflict with the Constitution do not have to be implemented in any specific manner. They may be treated as the ones which are "in the process of realisation".[13] On the other hand, one should not forget that final acts of the Constitutional Court are integral and that all their constituent parts are interrelated. The Constitutional Court has held more than once that "while adopting new, amending and supplementing already adopted laws and other legal acts, the state institutions that pass them are bound by the concept of the provisions of the Constitution and other legal arguments set forth in the reasoning part of the Constitutional Court ruling" (Constitutional Court rulings of 30 May 2003 and 19 January 2005, decision of 20 September 2005). Thus, state institutions and other subjects are bound not only by the resolving part of final acts of the Constitutional Court, but also by the arguments set forth in the part of reasoning as well as by the construction of the constitutional norms provided therein.

1. **The Constitutional Court's decisions are:**
   a) **final;**

Legal acts adopted by the Constitutional Court (rulings on the conformity of legal acts with the Constitution, conclusions and decisions) are **final and not subject to appeal** (Paragraph 2 of Article 107 of the Constitution). The Constitutional Court has emphasised that the said provision is applied to all legal acts adopted by the Constitutional Court without exception, by which a constitutional justice case is finished, i.e. final acts of the Constitutional Court are final and not subject to appeal irrespective of whether the Constitutional Court adopted these acts in a corresponding constitutional justice case after it had investigated in essence into the conformity of the legal act with the Constitution (other legal act of higher power) or after it had not investigated into the conformity of the legal act with the Constitution (other legal act of higher power) in essence, but by a properly (clearly and rationally) reasoned decision refused to consider the petition or dismissed the instituted legal proceedings

[13] Stačiokas S.: Lietuvos Respublikos Konstitucinio Teismo aktų vykdymas ir jų poveikis teisinei sistemai [Execution of Acts of the Constitutional Court of the Republic of Lithuania and Their Impact upon the Legal System]. The material of the 10th joint conference of the Constitutional Court of the Republic of Lithuania and the Constitutional Tribunal of the Republic of Poland "Execution of Decisions of Constitutional Courts and Their Impact upon the Legal System", Kaunas, 7–10 June 2006, pp. 39-58.

(case). Final acts of the Constitutional Court may not be reviewed, except the cases when the necessity to review them arises from the Constitution itself.

While construing the said constitutional provision that acts of the Constitutional Court are final and not subject to appeal, the Constitutional Court has held that among other things it also means that Constitutional Court rulings, conclusions and decisions by which a constitutional justice case is finished, i.e. final acts of the Constitutional Court, are obligatory to all state institutions, courts, all enterprises, establishments and organisations, as well as officials and citizens, including the Constitutional Court itself: final acts of the Constitutional Court are obligatory to the Constitutional Court itself, they restrict the Constitutional Court in the aspect that it may not change them or review them if there are no constitutional grounds for that (Constitutional Court ruling of 28 March 2006 and decision of 21 November 2006). No development of the official constitutional doctrine—neither the supplement of the concept of the provisions of the Constitution provided in the acts of the Constitutional Court adopted in the previous constitutional justice cases with new elements (fragments) nor the reinterpretation of the official constitutional doctrinal provisions formulated previously when the official constitutional doctrine is corrected—may be the grounds for reviewing the rulings, conclusions or decisions by which the corresponding constitutional justice cases were finished. The only grounds upon which the Constitutional Court may review its final act on its own initiative is the fact that new essential circumstances turned up which had been unknown to the Constitutional Court at the time of the adoption of the ruling.

Conclusions of the Constitutional Court are a separate type of the acts adopted by the Constitutional Court, which is characterised by certain peculiarities. The Constitutional Court passes conclusions on the issues ascribed to its competence in the Constitution, whereas a final decision, on the basis of the conclusion, is adopted by the Seimas. The fact that the Constitutional Court conclusion is final means that neither the Seimas, by adopting a decision ascribed to its competence, nor any other state institution may in no way deny, repeal or change the content of the Constitutional Court conclusion, nor deny the facts fixed in the case of constitutional justice.

b) subject to appeal; if so, please specify which legal entities/subjects are entitled to lodge appeal, the deadlines and procedure;

Rulings of the Constitutional Court are final and not subject to appeal (see the answer to the previous question).

c) binding *erga omnes;*

As it has already been mentioned in the this report, under Paragraph 1 of Article 107 of the Constitution, a law (or part thereof) may not be applied from the day of official

promulgation of the decision of the Constitutional Court that the law in question (or part thereof) is in conflict with the Constitution.

Paragraph 2 of Article 72 of the Law on the Constitutional Court provides that rulings of the Constitutional Court are binding to all state institutions, courts, all enterprises, establishments, and organisations as well as officials and citizens. The Constitutional Court has also more than once emphasised the overall compulsoriness of its decisions. It has stressed that the *erga omnes* model of constitutional control is consolidated in the Constitution, whereas a corresponding Constitutional Court decision has *erga omnes* impact on the whole practice of the application of the investigated legal act (part thereof) (Constitutional Court ruling of 28 March 2006). In addition, the Constitutional Court has also held that "all subjects of law, including the legislator, are bound by the earlier passed rulings of the Constitutional Court" (Constitutional Court decision of 12 January 2000).

It needs to be noted that all subjects of law are bound not only by the resolution of the Constitutional Court rulings, wherein the essence of the decision of the Constitutional Court is expressed, but also by the part of reasoning, which presents the reasoning and arguments of the Court, on the basis of which the Court has adopted one or another decision, and sets forth the concept of the provisions of the Constitution. The Constitutional Court has held that the provisions of the Constitution—its norms and principles—are construed in the acts of the Constitutional Court. In these acts, the official constitutional doctrine is created and developed. All law-making and law-applying subjects, including courts, must pay heed to the official constitutional doctrine when they apply the Constitution, they may not interpret the provisions of the Constitution differently from their construction in the acts of the Constitutional Court. Otherwise, the constitutional principle that only the Constitutional Court enjoys powers to construe the Constitution officially would be violated, the supremacy of the Constitution would be disregarded, and preconditions would be created for appearance of inconsistencies in the legal system. All constituent parts of the Constitutional Court ruling are interrelated and constitute a whole; therefore, while adopting new, amending and supplementing already adopted laws and other legal acts, the state institutions that pass them are bound by the concept of the provisions of the Constitution and other legal arguments presented in the reasoning part of the Constitutional Court ruling (Constitutional Court ruling of 30 May 2003 and decision of 20 September 2005). Thus, one needs to draw a conclusion that all subjects of law are bound by not only those Constitutional Court rulings whereby a certain legal act is recognised to be in conflict with the Constitution and which must be immediately implemented, but also by those whereby the lawfulness of a legal act is confirmed.

The Constitutional Court has also noted that law-making and law-applying institutions (officials) are bound by the concept of the constitutional provisions and arguments which are set forth not only in the Constitutional Court rulings assessing the conformity of legal acts with the Constitution, but also in other Constitutional Court acts, i.e. conclusions and decisions. Thus, under the Constitution, all acts of the

Constitutional Court in which the Constitution is construed, i.e. the official constitutional doctrine is formulated, by their content are also binding on law-making and law-applying institutions (officials), including courts of general jurisdiction and specialised courts (Constitutional Court decision of 20 September 2005 and ruling of 28 March 2006).

d) binding *inter partes litigantes.*

Since, as mentioned, Constitutional Court rulings have the nature of overall compulsoriness, they are, therefore, undoubtedly also binding on the parties that took part in the constitutional justice case, however, not on them alone, but also on all other law-making and law-applying subjects.

2. As from publication of the decision in the Official Gazette/Journal, the legal text declared unconstitutional shall be:

a) repealed;

In Paragraph 1 of Article 7 of the Constitution it is *expressis verbis* entrenched that any law or other act which is contrary to the Constitution shall be invalid.

Paragraph 1 of Article 107 of the Constitution provides that a legal act which has been recognised to be in conflict with the Constitution may not be applied from the day of official promulgation of the Constitutional Court ruling. This constitutional provision is to be construed as meaning that every legal act (or part thereof) passed by the Seimas, the President of the Republic, or the Government, or adopted by referendum, which is recognised as being in conflict with any legal act of higher power, *inter alia* (and, first of all) with the Constitution, is removed from the Lithuanian legal system for good, as it may never be applied anymore from the day of official promulgation of the Constitutional Court ruling (Constitutional Court rulings of 28 March 2006 and 6 June 2006, decision of 8 August 2006); also, from that moment, as a rule, the rights of persons acquired under the legal acts which have been recognised as being in conflict with the Constitution may not be implemented (Constitutional Court decision of 4 July 2008). Although neither the Constitution, nor the Law on the Constitutional Court include such formulations as "is repealed", "loses its power" or "is annulled", the imperative provision of the Constitution "may not be applied" means that this constitutes factual discontinuation of the power of a disputed legal act,[14] its removal from legal circulation. According to the President of the Constitutional Court K. Lapinskas, by its legal effects this equals to the annulment or repeal of a legal act (or part thereof).[15] It needs to be noted that constitutional norms clearly establish the moment of the beginning of invalidity of such an act: a legal act conflicting with the

[14] Lapinskas K.: Legal Sources and Final Acts of Constitutional Supervision Institutions // Konstitucinė justicija: dabartis ir ateitis = Constitutional Justice: The Present and the Future, Vilnius, 1998, pp. 322-339 (p. 328).
[15] *Ibid.*

Constitution may not be applied, thus, in fact, loses its legal power, from the day of official publishing of a corresponding Constitutional Court ruling.

After the Constitutional Court recognises that a constitutional law (part thereof) is in conflict with the Constitution, that a law (part thereof) or the Statute of the Seimas (part thereof) are in conflict with the Constitution or any constitutional law, that a substatutory legal act (part thereof) of the Seimas is in conflict with the Constitution, any constitutional law or law, and the Statute of the Seimas, that an act (part thereof) of the President of the Republic is in conflict with the Constitution, any constitutional law or law, and that an act (part thereof) of the Government is in conflict with the Constitution, any constitutional law or law, a constitutional duty arises for a corresponding subject of law-making—the Seimas, the President of the Republic, or the Government—to recognise such a legal act (part thereof) as no longer valid or (if it is impossible to do without the corresponding legal regulation of the social relations in question) to change it so that the newly established legal regulation is not in conflict with legal acts of higher power, *inter alia* (and, first of all) the Constitution. But even until this constitutional duty is carried out, the corresponding legal act (part thereof) may not be applied under any circumstances. In this respect the legal power of such a legal act is abolished (Constitutional Court ruling of 6 June 2006).

In themselves, no amendments or supplements of a legal act of greater power, even those of the Constitution, made after the Constitutional Court recognised, while referring to the previous provisions of the Constitution, a certain legal act (part thereof) passed by the Seimas, the President of the Republic or the Government or adopted by referendum as being in conflict with any act of greater power, *inter alia* (and, first of all) with the Constitution, bring back the legal act (part thereof) which was recognised as being in conflict with any legal act of greater power, *inter alia* (and, first of all) with the Constitution to the Lithuanian legal system. Under the Constitution, nor does the Constitutional Court have the powers to bring back such legal acts (parts thereof) to the Lithuanian legal system (Constitutional Court ruling of 28 March 2006).

b) suspended until when the act/text declared unconstitutional has been accorded with the provisions of the Constitution;

Since from the moment of publishing of the Constitutional Court ruling in the Official Gazette, the act which has been recognised as being in conflict with the Constitution loses its legal power and may not be applied, there is no sense in the suspension of its validity, i.e. in itself, it is removed from the legal system.

Under the Constitution, the validity of a legal act is suspended when the President of the Republic or Seimas *in corpore* apply to the Constitutional Court with a petition requesting for an investigation into the conformity of the act with the Constitution. Having considered the case and recognised that the disputed legal act conforms to the Constitution, the validity of the legal act is restored.

The Constitutional Court has held that, on the whole, suspension of validity of laws is not characteristic of law-making and may cause the state of instability and distrust in the legal system in society, create preconditions for appearance of legal gaps (Constitutional Court ruling of 13 November 1997) and, thus, is applied only in rare exceptional situations provided for in the Constitution.

c) suspended until when the legislature has invalidated the decision rendered by the Constitutional Court;

In Lithuania, the legislator may not invalidate the ruling of the Constitutional Court. Rulings of the Constitutional Court are final, not subject to appeal and obligatory to all. Therefore, there may simply be no such situation when the validity of a legal act recognised as being in conflict with the Constitution is suspended until when the legislator recognises the ruling of the Constitutional Court as invalid.

d) other instances.

The effect of Constitutional Court rulings may result not only in the repeal of the force of a legal act recognised as being in conflict with the Constitution and removal of that act from the legal circulation, but also in a duty arising for all state institutions to revoke the substatutory acts (provisions thereof) adopted by them which are based on the act that has been recognised as unconstitutional (Paragraph 2 of Article 72 of the Law on the Constitutional Court). In addition, decisions based on legal acts which have been recognised as being in conflict with the Constitution or laws must not be executed if they had not been executed prior to the appropriate Constitutional Court ruling went into effect (Paragraph 3 of Article 72 of the Law on the Constitutional Court).

3. Once the Constitutional Court has passed a judgment of unconstitutionality, in what way is it binding for the referring court of law and for other courts?

Constitutional Court decisions are obligatory to the referring court as well as to all other courts of general jurisdiction and specialised courts. While adjudicating cases, courts may not apply the legal acts which have been recognised as being in conflict with the Constitution. After the Constitutional Court has decided the dispute regarding the lawfulness of the legal act (norms thereof), the referring court renews the consideration of the suspended case and adjudicates a concrete case, wherein a question regarding the constitutionality of the applicable legal act arose, by following the ruling adopted by the Constitutional Court. The consequences of the Constitutional Court ruling are in essence of quasi-normative nature.[16] The final acts whereby a legal norm is denied, first

[16] Stačiokas S.: Lietuvos Respublikos Konstitucinio Teismo aktų vykdymas ir jų poveikis teisinei sistemai [Execution of Acts of the Constitutional Court of the Republic of Lithuania and Their Impact upon the Legal System] // Konstitucinė jurisprudencija. 2006, No. 3, pp. 311-324.

of all, exert a direct impact on the practice of courts of general jurisdiction and specialised courts.[17]

In its jurisprudence, the Constitutional Court has held 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 issues ascribed to its competence by the Constitution shall be final and not subject to appeal, which is entrenched in Article 107 of the Constitution; all courts of general jurisdiction are bound by the official constitutional doctrine formed in the jurisprudence of the Constitutional Court (Constitutional Court ruling of 28 March 2006). The said provisions of the constitutional doctrine also apply to specialised courts.

Thus, the courts are obliged to follow not only the resolution of Constitutional Court rulings, which discloses the essence of the decision adopted in the case, but also the concept of the provisions provided in the reasoning part of the Constitutional Court ruling. Each Constitutional Court ruling is integral (it constitutes a single whole), all its constituent parts are interrelated (Constitutional Court ruling of 19 January 2005, decisions of 10 February 2005 and 20 September 2005). The resolving part of the Constitutional Court ruling is based upon the arguments of the reasoning part (Constitutional Court decisions of 10 February 2005 and 20 September 2005).

Under the Constitution, the concept of the constitutional provisions and the arguments set forth in Constitutional Court rulings as well as in other Constitutional Court acts, i.e. conclusions and decisions, are binding on both law-making and law-applying institutions (officials), including courts of general jurisdiction and specialised courts established under Paragraph 2 of Article 111 of the Constitution (Constitutional Court decision of 20 September 2005 and ruling of 28 March 2006).

While considering the case regarding the constitutionality of a corresponding legal act, the Constitutional Court construes not only the norms of the Constitution, but also the provisions of the law or other legal act in question. Although construction of laws or other legal acts is not a direct competence of the Constitutional Court, it is necessary in order to compare the provisions of the legal act in question with the norms of the Constitution, so that the lawfulness of these provisions would be established. It needs to be noted that the nature of construction by the Constitutional Court is different from that of construction carried out by courts of general jurisdiction: the Constitutional Court construes norms of a law not on the basis of a concrete individual situation of the case, but rather in an abstract manner. While considering whether the provisions of the law in question conform to the Constitution, without doubt, the Constitutional Court discloses the content of the legal act being investigated, its purpose as well as the meaning of its legal notions. The construction

[17] Žilys J.: Konstitucinis Teismas – teisinės ir istorinės prielaidos [The Constitutional Court: Legal and Historical Preconditions]. TIC: Vilnius, 2001, pp. 72-78.

provided by the Constitutional Court is obligatory to the referring court as well as other courts of general jurisdiction and specialised courts, as an inseparable part of the Constitutional Court ruling. By means of such construction of legal norms not only the final decision of the Constitutional Court, conveyed in the resolving part of the ruling, is substantiated, but also a uniform perception of the content of the corresponding norms as well as that of principles of law is formed.

The Constitutional Court itself has also held that in order to be able to establish and adopt a decision whether the legal acts (parts thereof) being investigated are not in conflict with legal acts of higher power, the Constitutional Court has the constitutional powers to officially construe both the legal acts in question and the said legal acts of higher power; a different construction of the powers of the Constitutional Court would deny the constitutional purpose of the Constitutional Court itself (ruling of 6 June 2006 and decision of 3 May 2010); the Constitutional Court construes the legal acts under investigation inasmuch as it is necessary to establish and adopt a decision whether these acts (parts thereof) are not in conflict with legal acts of higher power, *inter alia* (and, first of all) the Constitution; questions of application of law are decided by a court which is considering a concrete case (decision of 3 May 2010).

Decisions of the Constitutional Court are binding not only on the other courts, but also the Constitutional Court itself: the legal position of the Constitutional Court (*ratio decidendi*) in corresponding constitutional justice cases has the significance of the precedent (Constitutional Court ruling of 22 October 2007).

4. Is it customary that the legislature fulfills, within specified deadlines, the constitutional obligation to eliminate any unconstitutional aspects as may have been found– as a result of *a posteriori* and/or *a priori* review?

Rulings of the Constitutional Court are, first of all, intended for law-making institutions, i.e. the subjects who had adopted the legal acts which had to be assessed by the Constitutional Court. The adoption of the Constitutional Court ruling determines not only the reaction, the analysis or assessment of the ruling by these state institutions, but also their direct duty to rationally react to Constitutional Court rulings and implement them.[18] The statistics on implementation of Constitutional Court rulings shows that till September 2010 the legislator properly implemented 101 Constitutional Court rulings out of 144 in which legal acts or parts thereof were recognised as being in conflict with the Constitution and/or the laws, whereas 43 rulings have not been implemented until now (it should be noted that this number also includes those rulings of the Constitutional Court, where the one-and-a-half year term from their adoption has not elapsed). Thus, it is possible to maintain that there certainly exists the practice where the legislator, upon receiving the Constitutional

[18] Sinkevičius V.: The Impact of the Constitutional Court Rulings on the Process of Legislation // Konstitucinė justicija: dabartis ir ateitis = Constitutional Justice: The Present and the Future, Vilnius, 1998, p. 461.

Court ruling, whereby a certain legal act has been recognised as unconstitutional, reacts, in a proper manner and in due time, and seeks to implement the ruling, however, there also occur such cases when the legislator fails to implement the said duty or implements it improperly.

5. **What happens if the legislature has failed to eliminate unconstitutional flaws within the deadline set by the Constitution and/or legislation? Give examples.**

The Constitution and the Law on the Constitutional Court do not provide any provisions which would establish the deadlines for elimination of unconstitutional flaws of legal acts. As it has already been mentioned in this report, once the Constitutional Court adopts a decision whereby a legal act or part thereof has been recognised to be in conflict with the Constitution, the legal act or part thereof in question may not be applied from the day of official publishing of the Constitutional Court ruling. A duty arises for the law-making subject that passed the legal act which has been recognised as unconstitutional to repeal such a legal act (part thereof) and change the legal regulation so that it would correspond to the provisions and principles of the Constitution. If the legislator fails to implement its duty to change the legal regulation that conflicts with the Constitution, the legal act or parts thereof which do not correspond to the Constitution are not applied from the day of promulgation of the Constitutional Court ruling, whereas the corresponding area of public relations is left unregulated, i.e. there emerge gaps of legal regulation or a vacuum of legal regulation. The Constitutional Court has held that such situations are constitutionally intolerable.

It needs to be noted that when a law-making subject does not properly implement its duty to remove the constitutional flaws within the set deadline and, due to this, there emerge gaps of legal regulation in the law system of the state, such gaps may be removed, in the course of application and construction of law, by courts of general jurisdiction and specialised courts, which adjudicate separate cases in accordance with their competence, *inter alia* by using the analogy of law, applying general legal principles and legal acts of higher power, first of all, the Constitution. In its decision of 8 August 2006, the Constitutional Court emphasised that the courts can fill the legal gaps that are in legal acts of lower power only *ad hoc*, i.e. by this way of application of law the legal gaps are removed only as regards a particular social relation due to which the dispute is decided in the case investigated by the court; on the other hand, the judicial (*ad hoc*) removal of legal gaps creates preconditions for formation of the same court practice in deciding cases of a certain category—the law which is entrenched in court precedents, which, it goes without saying, later can be changed or corrected otherwise by the legislator (or another competent law-making subject), when it regulates certain social relations by means of a law (or other legal act), thus removing the corresponding legal gap already not *ad hoc*, but by prospective legal regulation of general character. In the same decision, the Constitutional Court generally stated that

only law-making institutions may completely remove legal gaps (as well as legislative omission) by issuing respective legal acts. The courts cannot do this, they can fill the legal gaps that are in legal acts of lower power only *ad hoc*, since the courts administer justice, but they are not legislative institutions. However, in all cases there is an undeniable opportunity for courts to fill a legal gap, which is in a legal act of lower power, *ad hoc*. If such empowerments of courts were denied or not recognised, if the opportunities of courts to apply law, first of all the supreme law—the Constitution—depended on whether a certain law-making subject did not leave gaps in the legal regulation (legal acts) that he has established, and if courts were able to decide cases only after these legal gaps are filled by way of law-making, then one would have to hold that the courts, when they decide cases, apply not law, not, first of all, the supreme law—the Constitution—but only a law, that they administer justice not according to law, but only formally apply articles (parts thereof) of legal acts, that constitutional values, *inter alia* the rights and freedoms of the person, may be injured (and not compensated, nor redressed) only because a corresponding law-making subject has not legally regulated certain relations (or when he legally regulates them, but not intensively enough), i.e. that although certain values are entrenched in the Constitution, they, under the Constitution, are not properly defended and protected. Therefore, in cases where a corresponding law-making subject has not fulfilled its constitutional duty, i.e. has not passed a legal act which, instead of the legal act recognised as conflicting with the Constitution, would establish a new legal regulation that would be harmonised with the said legal acts of higher power, *inter alia* the Constitution, the courts have the empowerments arising from the Constitution to fill the emerged legal gaps in the course of construction and application of law. The Constitutional Court has also stressed that a different construction of the provisions of the Constitution would mean that only because a corresponding law-making subject fails to implement its duty to change the legal regulation recognised as being in conflict with the Constitution, one would deny the constitutional principles of a state under the rule of law and justice, those of direct application of the Constitution, damage compensation, legitimate expectations, as well as the general legal principle *ubi ius, ibi remedium*. The empowerments of the courts to fill the legal gaps which emerged as a result of a failure of a law-making institution to act or due to improper actions thereof prevent arbitrariness of state authorities and legal nihilism, and strengthen the trust of the person in the state and law. This should also induce a competent law-making subject to remove the existing legal gap—to establish the missing legal regulation instead of that recognised to be in conflict with the Constitution—in a shorter period of time and in a due manner.

There also occur cases when the legislator does not know how to implement the Constitutional Court ruling whereby a corresponding legal act has been recognised as being in conflict with the Constitution. Then, the Speaker of the Seimas applies to the Constitutional Court with a petition requesting to construe the provisions of a previously adopted ruling, and after such a construction is received, corresponding measures are taken. For example, when the 5 July 2007 Constitutional Court ruling on the Republic of Lithuania Law on the Restoration of the Rights of Ownership of

Citizens to the Existing Real Property was adopted, the Speaker of the Seimas, seeking specification on how the said ruling should be implemented, applied to the Constitutional Court requesting to construe as to from which moment, under the said ruling, there appear the legitimate expectations of citizens that the rights of ownership will be restored to them by assigning to ownership an area of land, forest or water body of equal value to that which they used to possess, which is in the territory of a state park and state reserve. In its decision of 4 July 2008, the Constitutional Court construed that the citizens whose land, which belonged to them by right of ownership and which was unlawfully nationalised or unlawfully disseized, used to be not in the territory of that state park or used to be in the territory of that state park, but they do not reside in the territory of that state park, may not be regarded as having the legitimate expectation to restore the rights of ownership by acquiring as ownership an area of land, forest or water body of equal value to that which they used to possess, which is in the territory of a state park and state reserve, however, the legitimate expectation of these persons to restore the rights of ownership by another way established in the law cannot be denied. In other words, the Constitutional Court has construed who may be entitled to regain an unlawfully nationalised or unlawfully disseized area of land in the territory of a state park or state reserve.

6. **Is legislature allowed to pass again, through another normative act, the same legislative solution which has been declared unconstitutional? Also state the arguments.**

Although in Paragraph 2 of Article 72 of the Law on the Constitutional Court it is entrenched that rulings passed by the Constitutional Court have the power of law, in Paragraph 5 thereof it is established that the power of the ruling of the Constitutional Court to recognise a legal act or part thereof as unconstitutional may not be overruled by a repeated adoption of a like legal act or part thereof. Thus, rulings of the Constitutional Court may not be equated to laws, let alone they may not be changed by means of a law. The Constitutional Court has held that after the Constitutional Court recognises a law (part thereof) or other act (part thereof) of the Seimas, act (part thereof) of the President of the Republic, or act (or part thereof) of the Government to be in conflict with the Constitution, the institutions which had issued the corresponding act—the Seimas, the President of the Republic, and the Government—under the Constitution, are prohibited from repeatedly establishing the legal regulation which has been recognised to be in conflict with the Constitution, by adopting corresponding laws and other legal acts afterwards. In this way the Constitutional Court ruled in its ruling of 30 May 2003, wherein it assessed the amendments to the Law on the Elections to Municipal Councils made after the previously adopted ruling of the Constitutional Court. The Court, while investigating the disputed legal regulation, *inter alia* established that the new amendments of the said legal act were, indeed, made in accordance with the Constitutional Court ruling, however, their entry into force was postponed until the election of municipal councils of the next term of office, although after the amendments of the said law came into force, the first sittings of newly elected

municipal councils had not taken place yet. The Court held that the legislator, by adopting such amendments of the legal act, disregarded the constitutional prohibition to establish repeatedly, by later adopted laws and other legal acts, such a legal regulation which is incompatible with the concept of the provisions of the Constitution; therefore, the Court recognised the aforesaid legal regulation to be in conflict with the Constitution. Thus, the jurisprudence of the Constitutional Court regards as an attempt to overcome the power of the Constitutional Court ruling not only a repeated adoption of a like legal act which was declared to be in conflict with the Constitution in the resolving part of the Constitutional Court ruling, but also cases of disregard of the concept of the provisions of the Constitution provided in the reasoning part of the ruling. According to the position adopted in the jurisprudence of the Constitutional Court, a legal act conflicting with the provisions of the Constitutional Court ruling will be considered to be in conflict with the Constitution.

7. **Does the Constitutional Court have a possibility to commission other state agencies with the enforcement of its decisions and/or to stipulate the manner in which they are enforced in a specific case?**

As it has been mentioned in this report, the duty of a law-making subject to implement decisions of the Constitutional Court stems from the Constitution and it has been more than once entrenched in the jurisprudence of the Constitutional Court. However, in Lithuania, as in many other states, no mechanism of enforced implementation of Constitutional Court decisions is provided for. The Constitutional Court of Lithuania investigates cases almost exclusively regarding conformity of legal acts with the Constitution or laws. Thus, rulings in these cases are not declarative, their overall compulsoriness is ensured by the Constitution and the Law on the Constitutional Court in the meaning that, once a ruling of the Constitutional Court is adopted and officially published, a provision of a legal act which has been recognised as being in conflict with the Constitution may not be applied.

The Statute of the Seimas (which has the power of a law) provides for the procedure of implementation of rulings of the Constitutional Court, which is compulsory also for those subjects who are obliged to take certain measures in order the ruling of the Constitutional Court would be implemented. However, neither the Constitution, nor other legal acts provide for any sanctions for failure to implement rulings of the Constitutional Court.

The practice in Lithuania involves no explicitly declared refusals to implement adopted rulings of the Constitutional Court, however, it is known that implementation of certain rulings sometimes becomes protracted.