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RÉPUBLIQUE DE LITUANIE / REPUBLIC OF LITHUANIA / REPUBLIK LITAUEN / ЛИТОВСКАЯ РЕСПУБЛИКА

The Constitutional Court of the Republic of Lithuania

Lietuvos Respublikos Konstitucinis Teismas

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XVIIth Congress of the Conference of European Constitutional Courts

Role of the Constitutional Courts in Upholding and Applying the Constitutional Principles

Questionnaire

For the National Reports

I. The role of the constitutional court in defining and applying explicit/implicit constitutional principles.

1. Does the constitutional court or equivalent body exercising the power of constitutional review (hereinafter referred as the constitutional court) invoke certain constitutional principles (e.g. separation of powers; checks and balances; the rule of law; quality and non-discrimination, proportionality, reasonableness, human dignity, etc.) in the process of constitutional adjudication? To what extent does the constitutional court go in this regard? Does the constitution or any other legal act regulate the scope of constitutional decision-making in terms of referring to specific legal sources within the basic law that the constitutional court may apply in its reasoning?

1.1. Does the constitutional court or equivalent body exercising the power of constitutional review (hereinafter referred as the constitutional court) invoke certain constitutional principles (e.g. separation of powers; checks and balances; the rule of law; quality and non-discrimination, proportionality, reasonableness, human dignity, etc.) in the process of constitutional adjudication? To what extent does the constitutional court go in this regard?

1.1. In considering constitutional justice cases, the Constitutional Court of the Republic of Lithuania (hereinafter referred to as the Constitutional Court) invokes various constitutional principles consolidated in or derived from the Constitution of the Republic of Lithuania (hereinafter referred to as the Constitution),such as the principle of the supremacy of the Constitution, its integrity, a state under the rule of law *(inter alia,* the principles of proportionality, reasonableness, and justice, derived from it), the separation of powers, the limitation of powers of state authorities, the equality of persons (equality of rights), the protection of the rights of ownership, the social

orientation of the state, the geopolitical orientation of the state, the harmonisation of the interests of the state and municipalities, and most other principles.

The Constitutional Court, as a judicial institution, does not initiate constitutional justice cases that it considers: constitutional justice cases are initiated only subsequent to petitions and inquiries of the subjects that are specified in the Constitution and have the right to apply to the Constitutional Court. It is specifically the doubts raised and issues formulated by petitioners that determine the problematic range of constitutional justice cases, the relevant aspects of the interpretation of the Constitution, and the removal of legal acts from the legal system once they are ruled by the Constitutional Court in conflict with the Constitution, as well as other changes in the legal system.Thus, how often and to what extent the Constitutional Court follows the constitutional principles depends on the subject matter of constitutional justice cases, i.e. on the nature of problems raised by petitioners.Often petitioners themselves request an investigation into the compliance of the impugned legal regulation not only with the concrete articles of the Constitution but also with the constitutional principles (in particular, in terms of the compliance of the legal regulation with the constitutional principles of a state under the rule of law, justice, and the equality of persons). Sometimes the Constitutional Court itself establishes the incompliance of a legal regulation with the constitutional principles that are not impugned by a petitioner; in the doctrine of the Constitutional Court, it has been held on more than one occasion that, in the cases where the Constitutional Court is investigating, subsequent to a petition, whether the impugned legal act (or its part) is in conflict with the articles (or their parts) of the Constitution indicated by the petitioner, the Constitutional Court is, at the same time, investigating whether this legal act (or its part) is in conflict with the Constitution – an integral and harmonious system;particular norms set out in the articles (or their parts) of the Constitution indicated by the petitioner may not be interpreted separately from other norms of the Constitution;the Constitutional Court, having found that an impugned legal act (or its part) is in conflict with the articles (or their parts) of the Constitution not indicated by the petitioner, has the powers to state this fact.[1]This is also applicable to the constitutional principles.

1.2. Does the constitution or any other legal act regulate the scope of constitutional decision-making in terms of referring to specific legal sources within the basic law that the constitutional court may apply in its reasoning?

[1]*Inter alia,* the Constitutional Court's ruling of 24 December 2002. Official Gazette *Valstybėsžinios,* 2003, No. 19-828; the Constitutional Court's ruling of 30 December 2015. The Register of Legal Acts, 30-12-2015, No. 21030.

1.2. Article 104 of the Constitution stipulates that the justices of the Constitutional Court, while in office, are independent of any other state institution, person, or organisation and follow only the Constitution of the Republic of Lithuania.

It should be noted that,at the beginning of the Constitutional Court's activity (the Constitutional Court started its activity in 1993), in the Lithuanian legalscientific literatureand in public debate, for some time there still was the tradition to comment the Constitution and to interpret it not on the grounds of the Constitution itself, not on the logic of the Constitution itself, and not on the interrelations between its norms and principles, but on the grounds of the laws and other lower-ranking legal acts that specify the provisions of the Constitution.[2]However, from the viewpoint of constitutional law, not the Constitution must be interpreted on the grounds of laws, but laws must be interpreted on the grounds of the Constitution.Only if doing so, it is possible to assess laws from the perspective of the Constitutionas the apex of the legal system.The Constitution is to be interpreted only on the grounds of the Constitution itself, its logic, the links and interrelations of its norms and principles, and the overall constitutional regulation.[3]

Later the Constitutional Court itself*expressis verbis* held that the norms and principles of the Constitution may not be interpreted on the grounds of the acts adopted by the legislature or other lawmaking subjects, as the supremacy of the Constitution in the legal system would be denied.[4]

In this context, it should be noted that,in those states where the mechanisms of the verification of the constitutionality of legal acts exist, constitutional law is jurisprudential law.In investigating the compliance of legal acts with the constitution, constitutional courts interpret the constitutions and formulateofficial constitutional doctrines.Therefore, the interpretation of the constitution, even though it is not mentioned *expressisverbis* in the constitution, is the immanent function of constitutional review.The powers of the Constitutional Court to officially interpret the Constitution and to provide the official concept of the provisions of the Constitution in its jurisprudence stem from the Constitution itself:in order to be able to determine whether the investigated legal acts (or their parts) are in conflict with higher-ranking legal acts and to adopt a decision, the Constitutional Court has the constitutional powers to officially interpretboth the legal acts under investigation and the said higher-ranking legal acts;a different interpretation of the

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[2]KŪRIS, E. KonstituciniaiprincipaiirKonstitucijostekstas [Constitutional Principles and the Text of the Constitution]. *Jurisprudencija*, 2001, vol. 23(15); p. 63.

[3]SINKEVIČIUS, V. Konstitucijosinterpretavimoprincipaiirribos [The Principles and Limits of Interpretation of the Constitution]. *Jurisprudencija*, 2005, vol. 67(59), pp. 7–19.

[4]*Inter alia,* the Constitutional Court's ruling of 12 July 2001. Official Gazette *Valstybėsžinios,* 2001, No. 62-2276, correction 10-10-2001, No. 86; the Constitutional Court's decision of 23 February 2011. Official Gazette *Valstybėsžinios,* 2011, No. 24-1180.

powers of the Constitutional Court would deny the constitutional mission of the Constitutional Court itself.[5]

In its jurisprudence, the Constitutional Court has held on more than one occasion that,under the Constitution, all acts of the Constitutional Court in which the Constitution is interpreted, i.e. the official constitutional doctrine is formulated, by their content, are also binding on both law-making andlaw-applyinginstitutions (officials).[6]Alllaw-making and law-applying subjects must respect the official constitutional doctrine when they apply the Constitution, and they cannot interpret the provisions of the Constitution differently from the interpretation provided in the acts of the Constitutional Court;otherwise, the constitutional principle that only the Constitutional Court enjoys the powers to interpret the Constitution officially would be violated, the supremacy of the Constitution would be disregarded, and the preconditions would be created for the occurrence of inconsistencies in the legal system.[7]

In the jurisprudence of the Constitutional Court, it has been noted on more than one occasion that the legal position *(ratio decidendi)* of the Constitutional Court has the force of precedent in the relevant constitutional justice cases.[8]The Constitutional Court has held more than once that it is bound both by the precedents that it itself has created and by the official constitutional doctrine that it itself has formulated and that substantiates such precedents;[9]on the basis of the constitutional doctrine and precedents that it itself has formulated, the Constitutional Court must ensure the continuity (consistency and non-discrepancy) of the constitutional jurisprudence and the predictability of its decisions.[10]The Court is not allowed not to restrain itself in this way;as long as the Constitutional Court follows this provision of self-restraint, the constitutional jurisprudence is predictable and other state institutions may refer to it while making and applying law.[11]

The specificity of the activity of the Constitutional Court in formulating the official constitutional doctrine is characterised by the fact thatthis doctrine is gradually revealed in constitutional justice cases.In the course of investigating the compliance of legal acts with the higher-ranking legal acts, the Constitutional Court develops the concept of the provisions of the

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[5]*Inter alia,* the Constitutional Court's ruling of 6 June 2006. Official Gazette *Valstybėsžinios,* 2006, No. 65-2400; the Constitutional Court's ruling of 5 September 2012. Official Gazette*Valstybėsžinios,* 2012, No. 105-5330.

[6]*Inter alia,* the Constitutional Court's decision of 20 September 2005. Official Gazette *Valstybėsžinios,* 2005, No. 113-4132; the Constitutional Court's ruling of 5 September 2012. Official Gazette *Valstybėsžinios,* 2012, No. 105-5330.

[7]*Inter alia,* the Constitutional Court's decision of 20 September 2005. Official Gazette *Valstybėsžinios,* 2005, No. 113-4132; the Constitutional Court's ruling of 5 September 2012. Official Gazette *Valstybėsžinios,* 2012, No. 105-5330.

[8]*Inter alia,* the Constitutional Court's ruling of 22 October 2007. Official Gazette *Valstybėsžinios,* 2007, No. 110-4511; the Constitutional Court's ruling of 10 December 2012. Official Gazette *Valstybėsžinios,* 2012, No. 145-7457.

[9]*Inter alia,* the Constitutional Court's ruling of 28 March 2006. Official Gazette *Valstybėsžinios,* 2006, No. 36-1293; the Constitutional Court's ruling of 5 September 2012. Official Gazette *Valstybėsžinios,* 2012, No. 105-5330.

[10]*Inter alia*, the Constitutional Court's ruling of 28 March 2006. Official Gazette *Valstybėsžinios,* 2006, No. 36-1293; the Constitutional Court's ruling of 22 December 2014. The Register of Legal Acts, 22-12-2014, No. 20411.

[11]KŪRIS, E. The Constitutional Court. In *Lietuvosteisinėsinstitucijos[Lithuanian Legal Institutions]:*Textbook of Vilnius University. Compiler and scientific editor E. Kūris.Vilnius: Registrųcentras, 2011, p. 94.

Constitution as presented in its previous acts and reveals new aspects of a particular legal regulation established in the Constitution where such aspects are necessary for the consideration of a concrete constitutional justice case.[12]

As it is specified in the Lithuanian legal scientific doctrine, by its activity, the Constitutional Court has contributed a lot to the creation of a new paradigm of constitutional law, according to which constitutional law has only two sources:the Constitution "in the narrow sense" (i.e., the "initial" constitutional document with subsequent amendments) and the acts of the Constitutional Court in which the provisions of the Constitution are interpreted.[13]

In the context of the question at issue, it should also be noted that the Constitutional Court has specified on more than one occasion that the jurisprudence of the European Court of Human Rights and the Court of Justice of the European Union, as a source for the interpretation of law, is also relevant for the interpretation and application of Lithuanian law[14] (for more information on the significance of international and European Union law, see *the answer to question I of part II of this questionnaire).*

2. What constitutional principles are considered to be organic in your jurisdiction?Are there any explicit provisions in the constitution setting out fundamental principles? Is there any case-law in respect of basic principles? How often does the constitutional court make reference to those principles?

2.1. What constitutional principles are considered to be organic in your jurisdiction? Are there any explicit provisions in the constitution setting out fundamental principles? Is there any case-law in respect of basic principles?

2.1. It should be noted that, in its jurisprudence, the Constitutional Court has identifiedseveral constitutional principles as fundamental: **the independence of the state, its**

[12]*Inter alia*, the Constitutional Court's ruling of 30 May 2003. Official Gazette *Valstybėsžinios,* 2003, No. 53-2361; the Constitutional Court's ruling of 28 March 2006. Official Gazette *Valstybėsžinios,* 2006, No. 36-1293.

[13]KŪRIS, E. EuroposSąjungosteisėLietuvosRespublikosKonstitucinioTeismojurisprudencijoje: sambūvioalgoritmopaieškos [The EU Law in the Jurisprudence of the Constitutional Court of the Republic of Lithuania: Search for the Algorithm of Coexistence]. *Teisėbesikeičiančioje Europoje: Liber AmicorumPranasKūris [Law in the Changing Europe: Liber AmicorumPranasKūris]*.Managing editor S. Katuoka. Vilnius: MykolasRomerisUniversityPublishing Centre, 2008, p. 677.

[14]For the first time, the Constitutional Court expressed such an opinion concerning the jurisprudence of the European Court of Human Rights in its ruling of 8 May 2000 (Official Gazette *Valstybėsžinios,* 2000, No. 39-1105) and, concerning the Court of Justice of the European Union (then the European Communities), in its ruling of 21 December 2006 (Official Gazette *Valstybėsžinios,* 2006, No. 141-5430).

democracy, the form of its governance – the republic, and the innate nature of human rights and freedoms.

Article 1 of the Constitution prescribes:"The State of Lithuania shall be an independent democratic republic", and Article 1 of the Constitutional Law "On the State of Lithuania", which is a constituent part of the Constitution, consolidates that the statement "The State of Lithuania shall be an independent democratic republic" is a constitutional norm of the Republic of Lithuania and a fundamental principle of the state.

While interpreting the provision of Article 1 of the Constitution, the Constitutional Court has held that this article of the Constitution consolidates the fundamental principles of the State of Lithuania: **the State of Lithuania is an independent democratic republic; the republic is the form of governance of the State of Lithuania; state power must be organised in a democratic way, and there must be a democratic political regime in this country.**[15]The provisions of Article 1 of the Constitution, as well as the principle of a state under the rule of law established in the Constitution, determine the main principles of the organisation and activities of state power in the State of Lithuania.[16]

One more constitutional foundation of the Republic of Lithuania as a democratic state under the rule of law is **the principle of the recognition of the innate nature of human rights and freedoms,**[17]which is consolidated in Article 18 of the Constitution, establishing that human rights and freedoms are innate.The recognition of human rights and freedoms as innate means, *inter alia,* the fact that the rights and freedoms of a person are inalienable, that he/she may not be deprived of them, and that they belong to the person *ipso facto;*one of the most important obligations of a democratic state based on law and justice is to respect, defend, and protect the values, as well as human rights and freedoms, upon which the Constitution, adopted by the Nation, is based and whose actual implementation, defence, and protection is the *raison d'être* of the state itself; otherwise, it would not be possible to regard the state asthe common good of the whole society.[18]

The Constitutional Court has held that the Constitution consolidates the fundamental constitutional values – the independence of the state, democracy, and the republic; these values are inseparably interrelated and form the foundation of the State of Lithuania, as the common good of the entire society consolidated in the Constitution; therefore, these constitutional values must not be

[15]*Inter alia,* the Constitutional Court's ruling of 23 February 2000. Official Gazette *Valstybėsžinios,* 2000, No. 17-419; the Constitutional Court's ruling of 13 December 2004. Official Gazette *Valstybėsžinios,* 2004, No. 181-6708.
[16]*Inter alia,* the Constitutional Court's ruling of 18 October 2000. Official Gazette *Valstybėsžinios,* 2000, No. 88-2724; the Constitutional Court's ruling of 2 May 2012. Official Gazette *Valstybėsžinios,* 2012, No. 52-2583.
[17]*Inter alia,* the Constitutional Court's ruling of 29 December 2004. Official Gazette *Valstybėsžinios,* 2005, No. 1-7; the Constitutional Court's ruling of 22 December 2010. Official Gazette *Valstybėsžinios,* 2010, No. 153-7836.
[18]The Constitutiional Court's ruling of 19 August 2006. Official Gazette *Valstybėsžinios,* 2006, No. 90-3529, correction 16-12-2006, No. 137; the Constitutional Court's ruling of 24 September 2009. Official Gazette *Valstybėsžinios,* 2009, No. 115-4888.

denied under any circumstances.This implies that those legal acts (or their parts)by which the values of the State of Lithuania – its independence, democracy, and the republic or the innate nature of human rights and freedomswould be substantially denied may not be in force as from the day of their adoption, and the consequences of the application of such legal acts (or their parts) must be considered as unconstitutional.A different interpretation of Articles 1 and 18 of the Constitution would mean that not only the principle of the supremacy of the Constitution and the constitutional imperative of the rule of law would be denied, but also that the preconditions would be created to lose the independence of the state, to disrupt democracy or abolish the republic, and to deny the innate nature of human rights and freedoms, i.e. to ruin the foundation of the State of Lithuania, as the common good of the entire society, which is consolidated in the Constitution.The provisions of Paragraph 1[19] of Article 102 and Paragraph 2[20] of Article 107 of the Constitution, as interpreted in the context of the fundamental constitutional values consolidated in Articles 1 and 18 of the Constitution, as well as in the context of the principle of the supremacy of the Constitutionand the constitutional imperative of the rule of law, *inter alia*,give rise to the powers of the Constitutional Court, as an institution implementing constitutional justice andguaranteeing the supremacy of the Constitution in the legal system and constitutional legitimacy, upon establishing in a constitutional justice case that an impugned legal act (or its part) not only is in conflict with the Constitution but also substantially denies the fundamental constitutional values of the State of Lithuania – its independence, democracy, and the republic, or the innate nature of human rights and freedoms, to recognise the consequences of the application of this legal act (or its part) as unconstitutional.[21]

In this context, the attention should be drawn to the fact, as noted in the Constitutional Court's ruling of 24 January 2014, the Constitution does not permit such amendments thereto that would deny any of the values lying at the foundations of the State of Lithuania – the independence of the state, democracy, the republic, and the innate nature of human rights and freedoms, with the exception of the cases where Article 1 of the Constitution would be amended in the manner prescribed by Paragraph 1 of Article 148 of the Constitution, or Article 1 of the Constitutional Law "On the State of Lithuania"would be amended in the manner prescribed by Article 2 of this law (i.e., only by referendum, if not less than 3/4 of the citizens of Lithuania with the electoral right vote in favour of it).While elaborating on this interpretation of the constitutional provisions

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

[20]Paragraph 2 of Article 107 of the Constitution prescribes: "The decisions of the Constitutional Court defined by the Constitution as falling within competence of the Constitutional Court are final and not subject to appeal."

[21]The Constitutional Court's decision of 19 December 2012. Official Gazette *Valstybėsžinios,* 2012, No. 152-7779; the Constitutional Court's ruling of 27 April 2016. The Register of Legal Acts, 28-04-2016, No. 10540; the Constitutional Court's ruling of 27 June 2016. The Register of Legal Acts, 27-06-2016, No. 17705.

consolidating the fundamental constitutional values of the State of Lithuania, in its ruling of 11 July 2014, the Constitutional Court emphasised that the innate nature of human rights and freedoms, democracy, and the independence of the state are such constitutional values that constitute the foundation for the Constitution as a social contract, as well as the foundation for the Nation's common life, which is based on the Constitution, and the foundation for the State of Lithuania itself.No one may deny the provisions of the Constitution consolidating these fundamental constitutional values, since doing so would amount to the denial of the essence of the Constitution itself.Therefore, even where regard is paid to the limitations on the alteration of the Constitution that stem from the Constitution itself, it is not permitted to adopt any such amendments to the Constitution that would destroy the innate nature of human rights and freedoms, democracy, or the independence of the state. If the Constitution were interpreted in a different way, it would be understood as creating the preconditions for abolishing the restored "independent State of Lithuania, founded on democratic principles", as proclaimed by the Act of Independence of 16 February 1918.[22]*(For more information, see also the answers to questions 3 and 6 of part II of this questionnaire).*

Except the identification of the fundamental principles of the State of Lithuania (which are also named as the fundamental constitutional values), the constitutional principles are not grouped into the main principles or any other principles in the jurisprudence of the Constitutional Court.The system of constitutional principles is a kind of "network", where different elements are interrelated by complex ties: part of constitutional principles is consolidated explicitly, while others are derived from the norms of the Constitution and principles directly enshrined in the Constitution.All these principles are of the same (highest) legal ranking; therefore, it would be inaccurate to speak about any hierarchy of them: implicit principles are not "less normative" in any way; they are neither less binding nor more important than those from which such implicit principles were derived.[23]

The Constitution does not include a separate chapter or article in which all the constitutional principles or only certain "most important" constitutional principles would be listed.The constitutional principles are consolidated in various provisions of the Constitution,for example:

– the Preamble to the Constitution prescribes:"The Lithuanian Nation … striving for an open, just, and harmonious civil society and a State under the rule of law."The Constitutional Court has also held on more than one occasion that this striving consolidates **the constitutional principle of a state under the rule of law.**However, the constitutional principle of a state under the rule of law maynot be interpreted as consolidatedonly in the Preamble to the Constitution, nor may it be

[22]The Constitutional Court's ruling of 11 July 2014. The Register of Legal Acts, 11-07-2014, No. 10117.
[23]KŪRIS, E. KonstituciniaiprincipaiirKonstitucijostekstas [Constitutional Principles and the Text of the Constitution]. *Jurisprudencija,* 2001, vol. 23(15),p. 61.

equated only with the declared striving for an open, just, and harmonious civil society and astate under the rule of law.The constitutional principle of a state under the rule of law is consolidated not only by the said striving but also, from various aspects, by all other provisions of the Constitution.The constitutional principle of a state under the rule of law integrates various values enshrined, protected, and defended by the Constitution, including those that are expressed by the aforementioned striving;[24]

– Article 2 of the Constitution prescribes that "The State of Lithuania shall be created by the Nation.Sovereignty shall belong to the Nation".This implies **the sovereignty of the Nation** as a constitutional principle.[25] However, that is not all. Paragraph 1 of Article 3 of the Constitution stipulates that no one may restrict or limit the sovereignty of the Nation or arrogate to himself the sovereign powers belonging to the entire Nation,[26]and Article 4 provides that the Nation executes its supreme sovereign power either directly or through its democratically elected representatives.These provisions also consolidate the principle of the sovereignty of the Nation.Finally, the principle of the sovereignty of the Nation is also implied by other provisions of the Constitution: by the statement of the Preamble that the Constitution is adopted and proclaimed "by the will of the citizens of the reborn State of Lithuania", the provision of Article 1 that the State of Lithuania is an independent democratic republic, and the provision of Paragraph 1 of Article 55 that the Seimas consists of "representatives of the Nation", etc.;

– Paragraphs 1 and 2 of Article 5 of the Constitution prescribe:"In Lithuania, state power shall be executed by the Seimas, the President of the Republic and the Government, and the Judiciary. The scope of power shall be limited by the Constitution." The Constitutional Court has held on more than one occasion that these provisions of the Constitution express **the principle of the separation of powers,** which is also consolidated in other articles of the Constitution establishing the powers of the state institutions implementing state power.[27]The constitutional principle of the separation of powers means that that the legislative, executive, and judicial powers

[24]*Inter alia*, the Constitutional Court's ruling of 29 December 2004. Official Gazette *Valstybėsžinios,* 2015, No. 1-7.
[25]This principle was mentioned in the Constitutional Court's ruling of 21 December 2006.
[26]In interpreting the provisions of Article 3 of the Constitution, in its ruling of 11 June 2014, the Constitutional Court held that: "Since the Constitution also binds the national community – the civil Nation itself, the requirement that the Constitution must be observed when the Nation, *inter alia,* directly (by referendum) executes its supreme sovereign power may not be assessed as a restriction or limitation, referred to in Article 3 of the Constitution, on the sovereignty of the Nation, or as the taking over of the sovereign powers belonging to the entire Nation. It should be emphasised that the purpose of the provisions of Article 3 of the Constitution is to protect the constitutional values referred to in this article (the sovereignty of the nation, the independence of the State of Lithuania, its territorial integrity, and the constitutional order); therefore, these provisions may not be invoked for the purpose of denying the said constitutional values. The provisions of Article 3 of the Constitution may not be interpreted, *inter alia,* in such a way that, purportedly, they imply the right of the Nation to disregard the Constitution, which has been adopted by the Nation itself, or the right of any citizen or any group of citizens to equate themselves with the Nation and act on behalf of the Nation while seeking to violate the aforementioned constitutional values."
[27]*Inter alia*, the Constitutional Court's ruling of 13 May 2010. Official Gazette *Valstybėsžinios,* 2010, No. 56-2766.

must be separated and must be sufficiently independent and that there must also be a balance among them; that every institution of power has the competence corresponding to its purpose;that the concrete content of the competence of an institution of power depends on the branch of state power to which this institution belongs and on the place of the institution among other institutions of state power, as well as on the relationship of such an institution with other institutions of power; that, after the powers of a concrete institution of state power have been directly established in the Constitution, no institution of state power may take over, transfer, or waive such powers; and that such powers may neither be changed nor limited by means of a law;[28]

– Paragraph 1 of Article 7 of the Constitution prescribes that any law or any other act contrary to the Constitution is invalid.The Constitutional Court has held on more than one occasion that this provision of the Constitution consolidates **the principle of the supremacy of the Constitution**.[29]The supremacy of the Constitution means that no legal act may be in conflict with the Constitution, that no one is permitted to violate the Constitution, that the constitutional order may and must be defended, and, finally, that the Constitution itself consolidates the procedure permitting the assessment of the compliance of any legal act with the Constitution.[30]The principle of the supremacy of the Constitution is, from different aspects, consolidated not only in Paragraph 1 of Article 7 of the Constitution, but also in other provisions of the Constitution:Paragraph 2 of Article 5, which provides that the scope of power is limited by the Constitution; the provision of Paragraph 1 of Article 6 that the Constitution is an integral and directly applicable act; the provision of Paragraph 2 of this Article that everyone may defend his/her rights on the grounds of the Constitution; the provision of Paragraph 1 of Article 30 that the person whose constitutional rights or freedoms have been violated has the right to apply to a court; the provision of Paragraph 1 of Article 102 that the Constitutional Court decides whether the laws and other acts of the Seimas are in conflict with the Constitution and whether the acts of the President of the Republic and the Government are in conflict with the Constitution or laws; the provision of Paragraph 1 of Article 110 that a judge may not apply a law that is in conflict with the Constitution; and in some other provisions.[31]It should be noted that all the aforementioned provisions consolidate the supremacy of the Constitution directly; however, the supremacy of the Constitution, as the "generalising" constitutional principle stems not from one provision but from several provisions of the

[28]*Inter alia,* the Constitutional Court's ruling of 14 January 2002. Official Gazette *Valstybėsžinios,* 2002, No. 5-186; the Constitutional Court's ruling of 13 May 2010. Official Gazette *Valstybėsžinios,* 2010, No. 56-2766.
[29]*Inter alia,* the Constitutional Court's ruling of 24 December 2002. Official Gazette *Valstybėsžinios,* 2003, No. 19-828; the Constitutional Court's ruling of 27 June 2016. The Register of Legal Acts, 27-06-2016, No. 17705.
[30]*Inter alia,* the Constitutional Court's ruling of 24 December 2002. Official Gazette *Valstybėsžinios,* 2002, No. 5-186; the Constitutional Court's ruling of 10 November 2014. The Register of Legal Acts, 10-11-2014, No. 16400.
[31]*Inter alia,* the Constitutional Court's ruling of 24 December 2002. Official Gazette *Valstybėsžinios,* 2002, No. 5-186; the Constitutional Court's ruling of 29 October 2003. Official Gazette *Valstybėsžinios,* 2003, No. 103-4611.

Constitution and from their systemic interrelation, or, more generally, from a certain "complex" of constitutional provisions;

– Article 10 of the Constitution prescribes that the territory of the State of Lithuania is integral and not divided into any state-like formations.While interpreting this provision, the Constitutional Court has noted that precisely this provision contains the constitutional consolidation of the unitary state system and expresses the idea of a united and indivisible state.[32]Thus, this provision of the Constitution consolidates **the principle of the territorial integrity of the state**;

– Article 23 of the Constitution prescribes:"Property shall be inviolable. The rights of ownership shall be protected by law. Property may be taken only for the needs of society according to the procedure established by law and shall be justly compensated for." The Constitutional Court has held on more than one occasion that Article 23 of the Constitution consolidates the principle of the inviolability of property, which implies that, under the Constitution, an owner has the right to perform any actions with regard to his/her property, save those prohibited by law, as well as to use his/her property and determine its future in any waythat does not violate the rights and freedoms of other persons;[33]

– Paragraph 1 of Article 29 of the Constitution provides that all persons are equal before the law, courts, and other state institutions and officials.**The constitutional principle of the equality of all persons before the law**, which is consolidated in the said article, requires that the fundamental rights and duties be established by law equally to all; this principle means the innate right of anindividual to be treated equally with others; it imposes the obligation to assess homogenous facts in the same manner and prohibits any arbitrary assessment of essentially the same facts in a different manner; however, it does not deny a differentiated legal regulation, established by law, with respect to certain categories of persons who are in different situations;the constitutional principle of the equality of persons before the law would be violated if certain persons or their groups were treated in a different manner, even though there are no differences of such a character and to such an extent between the said persons or their groups that would objectively justify their uneven treatment.[34]

Not all the constitutional principles are consolidated *expressis verbis* in the norms of the Constitution; a number of constitutional principles are derived from the norms of the Constitution and from the constitutional legal regulation as a whole.

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[32]The Constitutional Court's ruling of 18 February 1998. Official Gazette *Valstybėsžinios,* 1998, No. 18-435.
[33]*Inter alia,* the Constitutional Court's ruling of 14 March 2006. Official Gazette *Valstybėsžinios,* 2006, No. 30-1050; the Constitutional Court's ruling of 29 March 2012. Official Gazette *Valstybėsžinios,* 2012, No. 40-1973.
[34]*Inter alia,* the Constitutional Court's ruling of 29 June 2012. Official Gazette *Valstybėsžinios,* 2012, No. 78-4063; the Constitutional Court's ruling of 16 May 2013. Official Gazette *Valstybėsžinios,* 2013, No. 52-2604.

In this context, it should be noted that it is not always easy to reveal the real content even of the "simplest" norms of the Constitution.It is all the more difficult to reveal the content and scope of specific constitutional principles.The reason behind this is not only that constitutional principles are quite often not consolidated *expressisverbis*and must be derived from various provisions of the Constitution, as well as from other constitutional principles. The content of constitutional principles cannot have exhaustive (finite) definiteness, as their content includes a large number of various aspects;however, constitutional principles always have clearly defined fundamental meanings, and they always reflect the main fundamental values upon which the Constitution is based.[35]

2.2. How often does the constitutional court make reference to those principles?

2.2. See *the answer to question 1.1 of part I of this questionnaire.*

3. Are there any implicit principles that are considered to be an integral part of the constitution? If yes, what is the rationale behind their existence? How they have been formed over time? Do they originate from certain legal sources (e.g. domestic constitutional law or the constitutional principles emanating from international or European law; newly-adopted principles or ones re-introduced from the former constitutions)? Have academic scholars or other societal groups contributed in developing constitutionally-implied principles?

3. The Constitutional Court has held that the Constitution consolidates not only explicit but also implicit principles;implicit principles are directly declared in neither one nor several provisions of the Constitutionand are derived from constitutional normsor from other constitutional principles reflected in these norms.

In the jurisprudence of the Constitutional Court, it has been noted that "… similarly to law, which may not be treated solely as a text in which *expressis verbis* certain legal provisions and rules of behaviour are set out, so in the same way, the Constitution as a legal reality may not be viewed solely as a textual form; the Constitution may not be understood only as an aggregate of explicit provisions.… The very nature of the Constitution as a highest-ranking legal act and the idea of the constitutionality imply that the Constitution may not have, nor does it have, any gaps;consequently, there may not be and there is no such a legal regulation established in lower-ranking legal acts thatcould not be assessed in respect of its compliance with the Constitution. The Constitution as a

[35]SINKEVIČIUS, V. Konstitucijosinterpretavimoprincipaiirribos [The Principles and Limits of Interpretation of the Constitution]. *Jurisprudencija,* 2005, vol. 67(59), p. 9.

legal reality is comprised of various provisions, constitutional norms, and constitutional principles, which are directly consolidated in various formulations of the Constitution or are derived from them. Some constitutional principles are consolidated in constitutional norms formulated *expressisverbis,*while others, although not consolidated inconstitutional norms*expressisverbis,* are reflected in and are derived from constitutional norms, as well as from other constitutional principles reflected in these norms, or are derived from the entirety of the constitutional legal regulation or from the meaning of the Constitution as the act that consolidates and protects the system of major values of the state community – the civil Nation and provides the guidelines for the entire legal system."[36]

As mentioned before, all constitutional principles are of the same (highest) legal ranking;implicit principles are not at all "less normative", nor, in any way, less compulsory or less important than the principles from which these principles were derived.Thus, all constitutional principles that are interpreted by the Constitutional Court, both explicit and implicit ones, become an inseparable part of the Constitution and are equally binding.

An example of implicit principles could be the constitutional principles derived from the constitutional principle of a state under the rule of law. As mentioned before, the constitutional principle of a state under the rule of law is regarded as stemming from the Preamble to the Constitution, however, not only from it: this principle integrates various values consolidated, protected, and defended by the Constitution. This principle includes many other constitutional principles such as **the principles of the supremacy of laws in respect to substatutory acts, proportionality, justice, the protection of legitimate expectations, legal certainty, legal security**, etc.(for more information, see *the answer to question 6 of part I of this questionnaire).*These principles are not directly consolidated in the Constitution, but they are derived from it when the content of a constitutional principle of a state under the rule of law is interpreted.

Another example revealed in the jurisprudence of the Constitutional Court relates to**the principle of the geopolitical orientation of the State of Lithuania,**which means the membership of the Republic of Lithuania in the European Union and NATO, as well as the necessity to fulfil the international obligations related with the said membership.[37]This principle is not explicitly consolidated in the Constitution, but it stems from the constitutional regulation as a whole and from the constitutional tradition of the geopolitical orientation of the State of Lithuania.In the Constitution of 1992, the principle of the geopolitical orientation of the State of Lithuania is

[36]The Constitutional Court's ruling of 25 May 2004. Official Gazette *Valstybėsžinios,* 2004, No. 85-3094.
[37]The Constitutional Court's ruling of 7 July 2011. Official Gazette *Valstybėsžinios,* 2011, No. 84-4106.

consolidated fromboth the negative and positive aspects.[38]The negative aspect of the geopolitical orientation of the State of Lithuania is expressed in the Constitutional Act "On the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions", and the positive aspect is reflected in the Constitutional Act "On Membership of the Republic of Lithuania in the European Union";these constitutional acts are the constituent parts of the Constitution.The Constitutional Court has had a possibility of developing the doctrine disclosing the content of the principle of geopolitical orientation namely in recent years.The geopolitical orientation of Lithuania was, for the first time, mentioned in the Constitutional Court's ruling of 15 March 2011;[39] later,the principle of geopolitical orientation was developed in the Constitutional Court's rulings of 7 July 2011,[40] 24 January 2014,[41]and 11 July 2014[42](for more information on the principle of geopolitical orientation, see *the answer to question 1 of part II of the questionnaire).*

It has been mentioned that **the constitutional principle of the separation of powers** is consolidated in Paragraphs 1 and 2 of Article 5 of the Constitution.The separation of powers is not an end in itself; it must guarantee that the power will not be concentrated in one pair of hands and that it will not be overly centralised. In order that the state power would not be concentrated in one pair of hands, all the three branches of power have the obligationstowards each other.The Constitutional Court has noted on more than one occasion that state powers (their institutions) have **checks and balances** over each other.[43]The checks and balances among state power institutions are consolidated in various provisions of the Constitution, for example:the President of the Republic proposes the candidate for the post of the Prime Minister for consideration by the Seimas (Item 8 of Article 84), and the Seimas either gives or does not give its assent to this candidate (Item 6 of Article 67); upon the assent of the Seimas, the President of the Republic appoints the Prime Minister and charges him/her with forming the Government, and approves the composition of the formed Government (Item 4 of Article 84); however, a new Government receives the powers to act after the Seimas gives assent to its programme by a majority vote of the members of the Seimas participating in the sitting (Paragraph 5 of Article 92).The Government must resign when the Seimas twice in succession does not give its assent to the programme of the newly formed Government (Item 1 of Paragraph 3 of Article 101);additionally, when more than half of the ministers are replaced, the Government must once again receive its powers from the Seimas or,

[38]BIRMONTIENĖ, T.;et al. *Lietuvos konstitucinė teisė [Lithuanian Constitutional Law]*. Vilnius: Lithuanian University of Law, 2001, pp. 271–272.
[39]The Constitutional Court's ruling of 15 March 2011. Official Gazette *Valstybėsžinios,* 2011, No. 3-1503.
[40]The Constitutional Court's ruling of 7 July 2011. Official Gazette *Valstybėsžinios,* 2011, No. 84-4106.
[41]The Constitutional Court's ruling of 24 January 2014. The Register of Legal Acts, 24-01-2014, No. 478.
[42]The Constitutional Court's ruling of 11 July 2014. The Register of Legal Acts, 11-07-2014, No. 10117.
[43]*Inter alia*, the Constitutional Court's ruling of 30 December 2003. Official Gazette *Valstybėsžinios,* 2003, No. 124-5643; the Constitutional Court's decision of 16 January 2014. The Register of Legal Acts, 20-01-2014, No. 299.

otherwise, the Government must resign (Paragraph 2 of Article 101).Ministers, in directing the areas of governance entrusted to them, are responsible to the Seimas and the President of the Republic and are directly subordinate to the Prime Minister (Paragraph 2 of Article 96);however, the President of the Republic appoints and releases Ministers (responsible to the President) not on his/her own initiative but upon the proposal of the Prime Minister (Item 9 of Article 84 and Paragraph 2 of Article 92);the Seimas, by a majority vote of all the members of the Seimas and by secret ballot, may express no confidence in the Government or the Prime Minister (Item 2 of Paragraph 3 of Article 101);however, in such a case, the Seimas must be prudent:if the Seimas expresses direct no confidence in the Government, the Governmentmay propose that the President of the Republic call an early election to the Seimas (Item 2 of Paragraph 2 of Article 58);the President of the Republic must also be prudent:the newly elected Seimas may, by a 3/5 majority vote of all the members of the Seimas and within 30 days of the day of the first sitting,call an early election of the President of the Republic (Paragraph 1 of Article 87), etc.

It should be noted that,even though the said principles are not declared in the Constitution *expressis verbis*, they are still consolidated in the Constitution, but the form of their textual (verbal) expression is different.

Implicit principles are the result of the interpretation of the Constitution: they are formulated while interpreting the provisions of the Constitution, explicit principles, and the already formulated implicit principles.

It should be noted that the existence of certain principles, both explicit and implicit ones, can reasonably be stated only on the grounds of the provisions of the Constitution itself – the norms of constitutional law may be established only in the Constitution itself and nowhere else.The constitutional principles are revealed by interpreting the Constitution (its provisions), which, in addition to its text as an integral act, also includes the constitutional doctrine – "a living constitution", which ensures the dynamics of all the constitutional regulation and the possibility for it to change without changing the text of the basic act.

The interpretation of the Constitution is a dynamic process.The fact that a certain implicit constitutional principle, under the doctrine formulated by the Constitutional Court, is derived from a certain provision of the Constitution, or from an explicit or already revealed implicit principle, does not mean that, in other cases when the Constitutional Court considers that it is necessary to interpret this particular principle more broadly, to ground its constitutional nature by additional arguments, or to reveal its other aspects that are not noted in the doctrine, it will not be possible to refer to other provisions of the Constitution.It is characteristic of implicit principles that they may potentially be

derived not from one particular constitutional principle but from various provisions of the Constitution or from the entire constitutional regulation as a system.[44]

As mentioned before, it is possible to derive other principles from implicit constitutional principles.For instance, the interpretation of the principle of the independence of judges and courts, which is, from various aspects, consolidated in Paragraph 2[45] of Article 31, Article 109,[46] Paragraph 2[47] of Article 114 of the Constitution, and other provisions of the Constitution, gives rise to the principles of the judiciary as a full-fledged branch of state power, the organisational autonomy of courts, the self-regulation of the judiciary, self-governance, and some other principles.[48]

The Constitutional Court has held on more than one occasion that the formation of the official constitutional doctrine (both as a whole and on each individual issue of the constitutional legal regulation) is not a one-off act but a gradual and coherent process. This process is uninterrupted and is never fully completed.The official constitutional doctrine on any issue of the constitutional legal regulation is not formulated all "at once" but "case by case", by supplementing some of its elements (fragments) disclosed in the acts of the Constitutional Court adopted in previous constitutional justice cases with new elements disclosed in the acts of the Constitutional Court adopted in subsequent cases of constitutional justice.In interpreting the norms and principles of the Constitution, both explicitly and implicitly consolidated in the text of the Constitution, there is always – where this is required by the logic of the constitutional justice case under consideration – the possibility of formulating the official constitutional doctrinal provisions (i.e., to disclose such aspects of the constitutional legal regulation) that have not been formulated in previous acts of the Constitutional Court. Whenever the Constitutional Court considers new constitutional justice cases subsequent to petitions, the official constitutional doctrine formulated in the previous acts of the Constitutional Court (on each individual issue of the constitutional legal regulation that is important to a particular case) is every time supplemented with new fragments.The variety and completeness of the legal regulation consolidated in the Constitution, the highest-ranking legal act, is revealed when new provisions of the official constitutional doctrine are formulated.[49]

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[44]KŪRIS, E. KonstituciniaiprincipaiirKonstitucijostekstas [Constitutional Principles and the Text of the Constitution]. *Jurisprudencija,* 2001, vol. 23(15), p. 61.

[45]"A person charged with the commission of a crime shall have the right to a public and fair hearing of his case by an independent and impartial court."

[46]"In the Republic of Lithuania, justice shall be administered only by courts. When administering justice, judges and courts shall be independent. When considering cases, judges shall obey only the law. Courts shall adopt decisions in the name of the Republic of Lithuania."

[47]"Judges may not be held criminally liable or be detained, or have their liberty restricted otherwise, without the consent of the Seimas or, in the period between the sessions of the Seimas, without the consent of the President of the Republic of Lithuania."

[48]The Constitutional Court's ruling of 21 December 1999. Official Gazette *Valstybėsžinios,* 1999, No. 109-3192.

[49]*Inter alia*, the Constitutional Court's ruling of 28 March 2006. Official Gazette *Valstybėsžinios,* 2006, No. 36-1292; the Constitutional Court's ruling of 22 October 2007. Official Gazette *Valstybėsžinios,* 2007, No. 110-4511.

The development of the official doctrine of constitutional principles is subject to the rule of *interpretatiocessat in claris* – the interpretation is finished when there is a clear result; therefore, the same constitutional principle is interpreted very broadly in some cases and only recalled in other cases.In addition, attention should be drawn to the fact that the composition of the Constitutional Court regularly changes, and the science of law continues developing; therefore, new aspects of constitutional principles are revealed, while sometimes the former doctrine is specified in greater detail by putting different emphasis.This is an open-ended process.For instance, in its ruling of 8 November 1993, the Constitutional Court formulated the doctrine under which the constitutional principle of the equality of persons was to be applied only to natural persons; but, in its ruling of 28 February 1996, the Court softened this position and stated that the constitutional principle of the equality of persons is applicable not only to natural persons but also to legal persons.In addition, when the constitutional principle of the equality of persons was further developed, it was made clear that this principle is not absolute and does not apply to any such extent that would make a differentiated legal regulation impossible.

It should be noted that the representatives of the science of law enjoy an exceptional position among the unofficial interpreters of the Constitution; while enjoying the freedom of scientific research and applying the system of scientific cognitive measures, they formulate the scientific position of an ideal interpretation.Quite often the conclusions of the legal scientific doctrine or the arguments concerning scientific reasoning and the systemic cognition of a problem are directly or indirectly reflected in the constitutional jurisprudence, *inter alia,* in developing the official doctrine of constitutional principles.In this context, it should be mentioned that the justices of the Constitutional Court are often also scientific scholars.However, no matter how much we emphasise the importance of the legal scientific doctrine, we will inevitably have to recognise that it only constitutes the system of scientific approaches, concepts, and assessments.The insightsprovided by scholars, differently from the official constitutional doctrine of the Constitutional Court, have no legal force; it is only through the reasonableness of scientific arguments that these insights may influence the official interpreter of the Constitution.

When we talk about the contribution of other groups of society in the process of the development of constitutional principles, it should be held that the process of the interpretation of the Constitution guarantees the harmony between the stability and dynamism of the provisions of the Constitution, i.e. their adapting to a changing social and political environment.[50]While interpreting constitutional principles, the court builds a bridge between the actual nation and the

[50]KŪRIS, E. The Constitutional Court and Interpretation of the Constitution. In JARAŠIŪNAS, E;et al. *Constitutional Justice in Lithuania*. Vilnius: The Constitutional Court of the Republic of Lithuania, 2003, p. 205.

principles raised by its predecessors.[51]Thus, in the broadest sense, all the processes taking place in society are reflected in the jurisprudence of the Constitutional Court and the official doctrine formulated by the Constitutional Court; the Constitutional Court interprets the norms and principles of the Constitution with regard to a changing context and various social changes (as much as the Constitution (the text and the official constitutional doctrine) permits), and it does not allow the provisions of the Constitution to become "outdated" orlose their viability.

4. What role has the constitutional court played in defining the constitutional principles?How basic principles have been identified by the constitutional court over time?What method of interpretation (grammatical, textual, logical, historical, systemic, teleological etc.) or the combination thereof is applied by the constitutional court in applying or defining those principles? How much importance falls upon *travaux preparatoires* of the constitution, or upon the preamble of the basic law in identifying and forming the constitutional principles? Do universally recognised legal principles gain relevance in this process?

4.1. What role has the constitutional court played in defining the constitutional principles?

4.1. As mentioned before, under the Constitution, only the Constitutional Court has the powers to interpret the Constitution; the Constitutional Court reveals new aspects of a particular legal regulation established in the Constitution where such aspects are necessary for the consideration of a concrete constitutional justice case and develops the concept of the provisions of the Constitution as presented in its previous rulings and other acts.Thus, while investigating constitutional justice cases, the Constitutional Court reveals the content of constitutional principles directly consolidated in the Constitution or derived from it, and identifies new aspects of constitutional principles that are necessary for the consideration of a concrete constitutional justice case.

Unless the Constitutional Court has officially held that a certain principle is constitutional and has revealed its content, there may be various opinions and interpretations by scholars, lawyers, politicians, orobservers; however, such interpretations will be binding neither on the Constitutional Court nor on other subject of legal relationships.Meanwhile, what is stated by the Constitutional Court changes the situation essentially and is compulsory for all subjects of legal relationships.

[51]BLANCHER, P. Contrôle de constitutionalitéet volonté générale. Paris: Presses universitaires de France, 2001. p. 190.

For example, traditionally, it is considered that the principle of freedom of contract is one of the most important principles of civil law; however, in its ruling of 20 November 1996, the Constitutional Court held that the principle of freedom of contract was also a constitutional principle, even though it is not directly consolidated in the Constitution:"… the constitutional principle of the equality of the rights of persons is closelyrelated with the principle of freedom to conclude contracts.The freedom to conclude contracts is a concretised expression of such values consolidated in the Constitution as the inviolability of the human person (Article 21), the inviolability of property (Article 23), and freedom of individual economic activity (Article 46).Thus, the freedom to conclude contracts may be assessed as a guarantee of the constitutional level."

4.2. How basic principles have been identified by the constitutional court over time?

4.2. See *the answer to question 3 of part I of this questionnaire.*

4.3. What method of interpretation (grammatical, textual, logical, historical, systemic, teleological etc.) or the combination thereof is applied by the constitutional court in applying or defining those principles?

4.3. In this context, it is important to note the Constitutional Court's ruling of 25 May 2004, in which the following was held: "The Constitution may not be interpreted only literally by applying the sole linguistic (verbal) methoddue to the following: due to the fact that the Constitution is an integral act and that it is comprised of various provisions – both constitutional norms and constitutional principles, among which there may not exist and there is no contradiction and which constitute a harmonious system;also due to the fact that constitutional principles are derived from the entirety of the constitutional legal regulation expressing the spirit of the Constitution and from the meaning of the Constitution as the act that consolidates and protects the system of the major values of the state community – the civil Nation and provides the guidelines for the entire legal systemas well as due to the fact that the letter of the Constitution may not be interpreted or applied in the manner that denies the spirit of the Constitution. When interpreting the Constitution, various methods of interpretation of law must be applied: systemic, the one of general principles of law, logical, teleological, the one of intentions of the legislature, the one of precedents, historical, comparative, etc. Only such comprehensive interpretation of the Constitution may provide the conditions for the realisation of the purpose of the Constitution, as a social contract and the act of supreme legal force, and for ensuring that the meaning of the Constitution will not be

deviated from, that the spirit of the Constitution will not be denied, and that the values upon which the Nation has based the Constitution adopted by it will be consolidated in reality."

It should be noted that one of the methods of interpretation of law that is most often applied by the Constitutional Court is the systemic interpretation, when several provisions of the Constitution are assessed in a systemic manner and conclusions are drawn on the grounds of that assessment, as, for example:

1)"According to Article 120[52] and Paragraph 1[53] of Article 121 of the Constitution, when they are interpreted in conjunction with the constitutional principle of a state under the rule of law, which encompasses the requirements of legal certainty, legal clarity, legal security, and the protection of legitimate expectations, and in conjunction with the constitutional principle of responsible governance, the legislature must establish a clear procedure for calculating the funds allocated to municipalities, where such a procedure would ensure the funding required for a fully fledged functioning of self-government and for the fulfilment of municipal functions, and would also ensure the independence and freedom of the activity of municipalities within their competence as defined by the Constitution and laws";[54]

2)"Paragraph 2 of Article 110 of the Constitution should be interpreted while taking account of Paragraph 1 of the same article, which provides that a judge may not apply a law that is in conflict with the Constitution.[55]**When interpreting these provisions in a systemic manner,** it needs to be noted that, in cases where a court, which is considering a case, faces doubts whether a law (other legal act) applicable in the case is in conflict with the Constitution, it must apply to the Constitutional Court and request it to decide whether this law (other legal act) is in compliance with the Constitution, and, until the Constitutional Court decides this issue, the consideration of the case in the court may not be continued, i.e. it must be suspended.It should be noted that neither Paragraph 2 of Article 110 of the Constitution nor any other part of the Constitution establishes *expressis verbis* by what procedural decision the consideration of the case must be suspended.This must be specified by the legislature";[56]

3) "After interpreting, **in a systemic manner,** the norm set out in Paragraph 7 of Article 43 of the Constitution that there is no state religion in Lithuania, the norm of Paragraph 4 of the same

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[52]Article 120 of the Constitution states: "The State shall support municipalities." (Paragraph 1); "Municipalities shall act freely and independently within their competence defined by the Constitution and laws." (Paragraph 2)
[53]Paragraph 1 of Article 121 of the Constitution prescribes: "Municipalities shall draft and approve their budgets."
[54]The Constitutional Court's ruling of 11 June 2015. Register of Legal Acts, 2016-01-01, No. 1.
[55]Article 110 of the Constitution consolidates: "Judges may not apply any laws that are in conflict with the Constitution." (Paragraph 1);"In cases when there are grounds to believe that a law or another legal act that should be applied in a concrete case is in conflict with the Constitution, the judge shall suspend the consideration of the case and shall apply to the Constitutional Court, requesting that it decide whether the law or another legal act in question is in compliance with the Constitution." (Paragraph 2)
[56]The Constitutional Court's ruling of 16 January 2006. Official Gazette *Valstybėsžinios,* 2006, No. 7-254.

article that churches and religious organisations function freely according to their canons and statutes, also the norm of Paragraph 1 of Article 40 that state and municipal establishments of teaching and education are secular, as well as other constitutional provisions, the conclusion should be drawn that the principle of the separateness of the state and the church is established in the Constitution;the constitutional principle of the separateness of the state and the church is the basis of the secularity of the State of Lithuania, its institutions and their activities;the constitutional principle of the separateness of the state and the church, in conjunction with the freedom of convictions, thought, religion and conscience, which is established in the Constitution, also in conjunction with the constitutional principle of the equality of persons and other constitutional provisions, determine the neutrality of the state in matters of world view and religion".[57]

4.4. How much importance falls upon *travaux preparatoires*of the constitution, or upon the preamble of the basic law in identifying and forming the constitutional principles?

4.4. As regards the importance of the *travaux préparatoires* of the Constitution in identifying and forming constitutional principles, it should be noted that, from time to time, the representatives of the parties concerned substantiate their arguments by such *travaux préparatoires* when they impugn the compliance of a certain legal regulation with the Constitution;[58] however, there are not any examples in the jurisprudence of the Constitutional Court where the Court itself would make an explicit reference to the *travaux préparatoires* of the Constitution. On the other hand, it should be noted that part of the drafters of the Constitution later became justices of the Constitutional Court. Perhaps, due to this fact, there were no considerable disputes or discussions concerning the actual intentions of the drafters of the Constitution, which would be reflected in the acts of the Constitutional Court.

The official constitutional doctrine formulated by the Constitutional Court leaves no doubt that, when interpreting the Constitution, the Constitutional Court considers that all the text of the Constitution without exception, all the norms and principles of the Constitution, as well as its Preamble, have equal legal force.

The legal scientific doctrine also emphasises that the Preamble to the Constitution has a normative charge; in the rulings of the Constitutional Court, the provisions of the Preamble are often regarded as an imperative that is an important argument in deciding whether an impugned law

[57]The Constitutional Court's ruling of 22 December 2011. Official Gazette *Valstybėsžinios,* 2011, No. 160-7591.
[58]*Inter alia*, the Constitutional Court's ruling of 10 January 1998. Official Gazette *Valstybėsžinios,* 1998, No. 5-99.

or another legal act is in conflict with the Constitution.[59]

For example, the constitutional principle of a state under the rule of law, which is not directly mentioned in the Constitution, derives from the provisions of the Preamble to the Constitution. In its rulings, the Constitutional Court has held on more than one occasion that the constitutional principle of a state under the rule of law expresses various aspects of the striving for an open, just, and harmonious civil society and a state under the rule of law, as declared in the Preamble to the Constitution. Even though it is impossible to interpret the constitutional principle of a state under the rule of law as meaning that the said principle is consolidated only in the Preamble to the Constitution, or to equate it with the striving for an open, just, and harmonious civil society and a state under the rule of law, as declared in the Preamble to the Constitution, however, when a petitioner requests an investigation into the compliance of a legal act (its part) with the striving for an open, just, and harmonious civil society and a state under the rule of law, as declared in the Preamble to the Constitution, in such a case the Constitutional Court investigates the compliance of the said act (its part) with the constitutional principle of a state under the rule of law.[60]

4.5. Do universally recognised legal principles gain relevance in this process?

4.5. In formulating constitutional principles and interpreting their content, the Constitutional Court has referred on more than one occasion to universally recognised legal principles and international practice. Below are several quotations illustrating such a reference:

– in interpreting Paragraph 1 of Article 135 of the Constitution, under which, in implementing its foreign policy, the Republic of Lithuania follows the universally recognised principles and norms of international law, seeks to ensure national security and independence, the welfare of the citizens and their fundamental rights and freedoms, and contributes to the creation of the international order based on law and justice, as well as in interpreting Paragraph 3 of Article 138, which stipulates that international treaties ratified by the Seimas of the Republic of Lithuania are a constituent part of the legal system of the Republic of Lithuania, the Constitutional Court held that "the State of Lithuania, recognising the principles and norms of international law, may not apply substantially different standards to the people of this country. Holding that it is an equal member of the international community, the State of Lithuania, of its own free will, adopts and

[59]SINKEVIČIUS, V. Konstitucijosinterpretavimoprincipaiirribos [The Principles and Limits of Interpretation of the Constitution]. *Jurisprudencija,* 2005, vol. 67(59), p. 9.
[60]*Inter alia,* the Constitutional Court's ruling of 13 December 2004. Official Gazette *Valstybėsžinios,* 2004, No. 181-6708.

recognises these principles and norms, the customs of the international community, naturally integrates itself into the world culture, and becomes its natural part";[61]

– "… in order to be in line with the commitment of the Republic of Lithuania, as prescribed in Paragraph 1 of Article 135 of the Constitution, to fulfil, in good faith, its international obligations arising under the universally recognised norms of international law (general international law), *inter alia,* the *jus cogens* norms that prohibit international crimes, the criminal laws of the Republic of Lithuania that are related to liability for international crimes, *inter alia,* genocide, may not establish any such standards that would be lower than those established under the universally recognised norms of international law. Disregard for the said requirement would be incompatible with the striving for an open, just, and harmonious civil society and a state under the rule of law, as consolidated in the Preamble to the Constitution and expressed through the constitutional principle of a state under the rule of law";[62]

– "If the norms of the Constitution comprised the facts that appeared earlier and had no legal effect, that would mean the expansion of the sphere of a legal regulation, i.e. the relevant legal norms would have retroactive effect. This, however, would contradict the general legal principle that 'no law may be given retroactive effect'";[63]

– "… Under the Constitution, subjects of legal relations are obliged to act in good faith and without violating law. They have the duty to seek to find out by themselves the requirements of law. This is required by the general legal principle of *bona fides*, which is inseparable from the constitutional principle of a state under the rule of law";[64]

– "Taking account of the provision of Paragraph 2 of Article 7 of the Constitution that only laws that are published shall be valid and of the fact that, by following the general legal principle of *lex retro non agit,* which is also entrenched in the Constitution, according to which the legal force of legal acts must only be prospective (save the cases allowed by the general legal principle of *lex benignior retro agit),* it needs to be held that the application of the provisions of the Decree of the President of the Republic …of 16 January 2003 … could start only as from 24 January 2003, when this decree of the President of the Republic was published in the official gazette *Valstybėsžinios*";[65]

– "According to the doctrine of law, special legal norms should be applied if there exists an inconsistency between the general and special legal norms";[66]

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[61]The Constitutional Court's ruling of 9 December 1998. Official Gazette *Valstybėsžinios,* 1998, No. 109-3004.
[62]The Constitutional Court's ruling of 18 March 2014. The Register of Legal Acts, 19-03-2014, No. 3226.
[63]The Constitutional Court's ruling of 21 April 1994. Official Gazette *Valstybėsžinios,* 1994, No. 31-562.
[64]The Constitutional Court's ruling of 27 June 2007. Official Gazette *Valstybėsžinios,* 2007, No. 72-2865.
[65]The Constitutional Court's decision of 29 December 2006. Official Gazette *Valstybėsžinios,* 2007, No. 1-26.
[66]The Constitutional Court's ruling of 28 February 1996. Official Gazette *Valstybėsžinios,* 1996, No. 20-537.

– "It should be noted that the doctrine of human rights, as well as the law of democratic states that is based on such a doctrine, recognises a certain possibility of limiting both property rights and some other fundamental human rights. However, the principal provision is followed that the substance of the content of any basic human right may not be violated by means of such limitations. If a relevant right were limited to the extent that its implementation would become impossible, if such a right were restricted to the extent that reasonable limits would be exceeded, or its legal protection would not be ensured, in such a case there would be grounds for asserting that the very essence of such a right is violated, which would be tantamount to denying the said right";[67]

– "The persons against whom the limitations are applied have no opportunity to appeal to a court. Meanwhile, under the universally recognised doctrine of the protection of human rights and freedoms, it is possible to restrict the rights and freedoms only by law and by necessarily providing a guarantee for an opportunity to appeal to a court on the grounds of violated rights";[68]

– "The Constitution is based on universal and unquestionable values, *inter alia*, respect for law and the rule of law, the limitation of the scope of power, the duty of state institutions to serve the people and their responsibility to society, justice, the striving for an open, just, and harmonious civil society, a state under the rule of law, as well as the recognition of and respect for human rights and freedoms".[69]

It should be noted that, when formulating constitutional principles and interpreting their content, the Constitutional Court takes into consideration the interpretation of the universally recognised legal principles that is presented in the jurisprudence of the European Court of Human Rights (the right of access to a court,[70] the right to a fair trial,[71] *nullum crimen, nulla poena sine lege*,[72] the right to free elections,[73] protection of private ownership,[74] limitations on the rights of persons,[75] the protection of legitimate expectations,[76] dual citizenship,[77] the presumption of

[67] The Constitutional Court's ruling of 18 April 1996. Official Gazette *Valstybėsžinios,* 1996, No. 36-915.
[68] The Constitutional Court's ruling of 4 March 1999. Official Gazette *Valstybėsžinios,* 1999, No. 23-666.
[69] The Constitutional Court's ruling of 25 May 2004. Official Gazette *Valstybėsžinios,* 2004, No. 85-3094; the Constitutional Court's ruling of 24 September 2009. Official Gazette *Valstybėsžinios,* 2009, No. 115-4888.
[70] The Constitutional Court's ruling of 5 July 2013. Official Gazette *Valstybėsžinios,* 2013, No. 73-3679; the Constitutional Court's decision of 28 June 2016. The Register of Legal Acts, 29-06-2016, No. 17828.
[71] *Inter alia,* the Constitutional Court's ruling of 12 April 2013. Official Gazette *Valstybėsžinios,* 2013, No. 40-1950; the Constitutional Court's ruling of 27 April 2016. The Register of Legal Acts, 28-04-2016, No. 10540.
[72] The Constitutional Court's ruling of 18 March 2014. The Register of Legal Acts, 19-03-2014, No. 3226.
[73] The Constitutional Court's ruling of 13 October 2014. The Register of Legal Acts, 13-10-2014, No. 13988; the Constitutional Court's ruling of 20 October 2015. The Register of Legal Acts, 20-10-2015, No. 15777.
[74] The Constitutional Court's ruling of 30 October 2014. The Register of Legal Acts, 30-10-2014, No. 15163; the Constitutional Court's ruling of 16 June 2015. The Register of Legal Acts, 16-06-2015, No. 9641.
[75] *Inter alia,* the Constitutional Court's ruling of 26 February 2015. The Register of Legal Acts, 27-02-2015, No. 3023.
[76] The Constitutional Court's ruling of 30 October 2014. The Register of Legal Acts, 30-10-2014, No. 15163.
[77] The Constitutional Court's decision of 5 January 2016 No. KT1-S1/2016, case No. 18/2013.

innocence,[78] etc.) and in the jurisprudence of the Court of Justice of the European Union (the protection of legitimate expectations, legal certainty,[79] transparency,[80] the right to defence, including the right to be heard,[81] the right of access to a court,[82] etc.).

5. What is a legal character of the constitutional principles? Are they considered to be the genesis of the existing constitutional framework? What emphasis is placed upon the fundamental principles by the constitutional court in relation to a particular constitutional right? Are basic principles interpreted separately from the rights enumerated in the constitution or does the constitutional court construe fundamental principles in connection with a specific constitutional right as complementary means of latter's interpretation? Can the basic principles in your jurisprudence constitute a separate ground for unconstitutionality without their connection with a concrete constitutional norm? Is there any requirement in law placed upon the judicial acts of enforcement of constitutional principles?

5. The Constitutional Court has held that constitutional principles express the strivings and values that are consolidated, protected, and defended by the Constitution of the Republic of Lithuania, which was adopted by the Nation by the referendum of 25 October 1992; the constitutional order of the Republic of Lithuania is based on those strivings and values.[83] The scientific legal doctrine argues that constitutional principles are the fundamental provisions that are consolidated in the Constitution and determine the direction of the overall legal regulation.[84]

The Constitutional Court has held that there may not exist and there is no contradiction between constitutional principles and constitutional norms – all constitutional norms and constitutional principles form a harmonious system. It is constitutional principles that organise all the provisions of the Constitution and make them a harmonious entirety; constitutional principles do not permit the existence in the Constitution of any internal contradictions or any such interpretation of the Constitution that could distort or deny the meaning of any constitutional provision, or any value entrenched in or protected by the Constitution; constitutional principles reveal not only the letter but also the spirit of the Constitution – the values and objectives entrenched in the Constitution by the Nation, who chose a certain textual form and verbal expression of provisions,

[78] The Constitutional Court's ruling of 27 June 2016. The Register of Legal Acts, 27-06-2016, No. 17705.
[79] The Constitutional Court's ruling of 29 November 2007. Official Gazette *Valstybėsžinios,* 2007, No. 126-5132.
[80] The Constitutional Court's ruling of 22 January 2008. Official Gazette *Valstybėsžinios,* 2008, No. 10-350.
[81] The Constitutional Court's ruling of 27 April 2016. The Register of Legal Acts, 28-04-2016, No. 10540.
[82] The Constitutional Court's decision of 28 June 2016. The Register of Legal Acts, 29-06-2016, No. 17828
[83] The Constitutional Court's ruling of 11 July 2002. Official Gazette *Valstybėsžinios,* 2002, No. 72-3080; the Constitutional Court's ruling of 13 December 2004. Official Gazette *Valstybėsžinios,* 2004, No. 181-6708.
[84] BIRMONTIENĖ, T.; et al. *Lietuvos konstitucinė teisė [Lithuanian ConstitutionalLaw]*, p. 79.

defined certain norms of the Constitution, and either explicitly or implicitly established a certain constitutional legal regulation. Thus, there may not exist and there is no contradiction not only between constitutional principles and constitutional norms but also between the spirit and the letter of the Constitution: the letter of the Constitution may not be interpreted or applied in the manner that would deny the spirit of the Constitution; it is possible to understand the spirit of the Constitution only when the constitutional legal regulation is perceived as a whole and only upon the evaluation of the purpose of the Constitution as a social contract and the act of supreme legal force. The spirit of the Constitution is expressed by the entirety of the constitutional legal regulation, i.e. it is expressed by all the provisions of the Constitution: both by the norms of the Constitution directly set out in the text of the Constitution and by the principles of the Constitution, including those that originate from the entirety of the constitutional legal regulation and the meaning of the Constitution as an act that consolidates and protects the system of the major values of the Nation, as well as lays down the guidelines for the whole legal system.[85]

The Constitutional Court has also noted that none of the provisions of the Constitution may be interpreted in the manner by which a certain constitutional principle would be denied or distorted, since the aspirations and/or values that were consolidated by the Nation in the Constitution adopted by it would also be denied and/or distorted – it is the Nation, the sovereign founder of the State of Lithuania (Article 2 of the Constitution) who constitutionally obligated the state (which was created by the Nation) to protect and defend those aspirations and values.[86]

The Lithuanianlegal scientific doctrine notes that, practically, every provision (formulation of the text) of the Constitution, if such a provision contains a certain norm, always consolidates a certain constitutional principle; therefore, it would not be inaccurate to define the Constitution and constitutional law as, "first of all, a set of principles", i.e. as the system of constitutional principles,in which certain "principal" provisions are formulated as norms.[87]All the norms of the Constitution express or particularise certain constitutional principles in some way. For example, the norm that the Seimas consists of representatives of the Nation – 141 members of the Seimas expresses and particularises the constitutional principle that citizens have the right to participate in the governance of their state both directly and through their democratically elected representatives (Paragraph 1 of Article 33); this principle is expressed and particularised by the norm that citizens who, on the day of the election, have reached 18 years of age have the electoral right. In addition, it is often the case that several constitutional norms express and particularise a single constitutional

[85]The Constitutional Court's ruling of 25 May 2004. Official Gazette *Valstybėsžinios,* 2004, No. 85-3094.
[86]The Constitutional Court's ruling of 13 December 2004. Official Gazette *Valstybėsžinios,* 2004, No. 181-6708.
[87]KŪRIS, E. KonstituciniaiprincipaiirKonstitucijostekstas [Constitutional Principles and the Text of the Constitution]. *Jurisprudencija,* 2001, vol. 23(15), p. 61.

principle; however, there are cases where the same constitutional norm particularises not one but several interrelated principles. For instance, the norm by which a person apprehended *in flagrante delicto* must, within 48 hours, be brought before a court for the purpose of deciding, in the presence of this person, on the validity of the apprehension, particularises several constitutional principles: human liberty is inviolable (Paragraph 1 of Article 20); no one may be arbitrarily apprehended or detained and no one may be deprived of his/her liberty otherwise than on the grounds and according to the procedures established by law (Paragraph 2 of Article 20); a person suspected of committing a crime, as well as the accused, is guaranteed, from the moment of his/her apprehension or first interrogation, the right to defence, as well as the right to an advocate (Paragraph 6 of Article 31); a person charged with committing a crime has the right to a public and fair hearing of his/her case by an independent and impartial court (Paragraph 2 of Article 31); it is prohibited to compel anyone to give evidence against himself/herself, or his/her family members or close relatives (Article 31 Paragraph 3).[88]

It should be noted that the cases in which the Constitutional Court states that an act conflicts only with certain constitutional principles are rare; however, stating the existence of conflict, the Constitutional Court most often points out the constitutional norm with which a specific constitutional principle is related. Nonetheless, there are some examples in the jurisprudence of the Constitutional Court where the conflict of the provisions of a law with the principles of a state under the rule of law and justice provided sufficient grounds for declaring the said provisions to be unconstitutional, as, for instance:

– in its ruling of 6 December 2000,[89] the Constitutional Court recognised that the provisions of the Law on Tax Administration, whereby the minimum amounts of fines to be calculated on the amount of the income of the relevant enterprise (or on the amount of income concealed due to false accounting), where in all cases a fine, depending on the committed violation, could not be smaller than 5,800 and 14,500 euros, were in conflict with the principles of justice and a state under the rule of law, which are entrenched in the Constitution. The Constitutional Court noted that the consolidation of the said minimum amounts of fines led to the legal situation where a fine imposed on certain economic subjects for the same violations of laws comprised a much larger portion of the income of an enterprise (or that of the amount of income concealed due to false accounting) compared with a fine imposed on other economic subjects; thus, such a legal regulation did not comply with the principles of justice and a state under the rule of law;

[88]Ibid., p. 60.
[89]The Constitutional Court's ruling of 6 December 2000. Official Gazette *Valstybėsžinios,* 2000, No. 105-3318.

– in its ruling of 24 December 2008,[90] the Constitutional Court recognised that the provisions of the Law on the State Pensions of the Officials and Servicemen of the Interior, the Special Investigation Service, State Security, National Defence, the Prosecution Service, the Department of Prisons and of the Establishments and State Enterprises That Are Subordinate to the Latter, as well as those of the Law on the State Pensions of Officials and Servicemen, according to which the state pensions of officials and servicemen were not paid to the pensioners who were fully supported by the state, were in conflict with the constitutional principle of a state under the rule of law. The Constitutional Court noted that the impugned provisions did not sufficiently disclose the content of the ground – "full support by the state" – for the non-payment of the state pension and that the said vague and unclear formulation could not provide a basis for terminating the payment of the granted and paid state pension of officials and servicemen. Since the legislature had not properly disclosed the content of the impugned provision, it was impossible to assess whether, in limiting the payment of the granted state pension of officials and servicemen to the pensioners who received full support by the state, the requirement of proportionality was followed and whether there was a violation of both the right of a person and his/her legitimate expectation (where the said right and legitimate expectation were related to the protection of the rights of ownership of the person) to receive the granted and paid state pension of officials and servicemen, i.e. it was impossible to assess whether the ground – "full support by the state" – for the non-payment of the state pension of officials and servicemen was established in observance of the Constitution;

– in its ruling of 5 March 2013,[91] the Constitutional Court recognised that the provisions of the Provisional Law on the Recalculation and Payment of Social Benefits and the relevant items of the Regulations on Social Insurance Allowances of Sickness and Maternity, as approved by the Government, where the said provisions and relevant items created the preconditions not only for reducing the granted maternity (paternity) allowances and benefits by 10 percent, but also for additionally reducing those allowances and benefits that exceeded certain established maximum amounts, were in conflict with the constitutional principle of a state under the rule of law. Such a reduction in granted maternity (paternity) allowances and benefits was uneven; therefore, the said reduction did not comply with the proportionality requirements that arise from the constitutional principle of a state under the rule of law; in view of the fact that proportionality is an element of the constitutional principle of a state under the rule of law, the Constitutional Court stated that there was a conflict with the constitutional principle of a state under the rule of law;

[90]The Constitutional Court's ruling of 24 December 2008. Official Gazette *Valstybėsžinios,* 2008, No. 150-6106.
[91]The Constitutional Court's ruling of 5 March 2013. Official Gazette *Valstybėsžinios,* 2013, No. 25-1222.

– in its ruling of 16 June 2015,[92] the Constitutional Court recognised that, in view of the procedure of its adoption, a government resolution that had amended a previous government resolution and, among other things, reduced the maximum size of new plots of land in the city of Kaunas was in conflict with the constitutional principle of a state under the rule of law. The Constitutional Court held that the Government failed to follow the procedure established in the law: according to the said procedure, such sizes could be approved only upon receiving a proposal of the relevant municipality concerning the establishment (amendment) of the said sizes; therefore, the Government violated the constitutional principle of a state under the rule of law, according to which the Government, when passing legal acts, must comply with laws that are in force.

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

The Constitution and the Law on the Constitutional Court lay down the essential requirements related to the binding nature and implementation of the acts of the Constitutional Court:

– a law (or its part) or another act (or its part) of the Seimas, an act of the President of the Republic, or an act (or its part) of the Government may not be applied from the day of the official publication of the decision of the Constitutional Court that the act in question (or its part) is in conflict with the Constitution (Paragraph 1 of Article 107 of the Constitution);

– the decisions of the Constitutional Court on the issues assigned to its competence (rulings on the compliance of legal acts with the Constitution, as well as decisions and conclusions) by the Constitution are final and not subject to appeal (Paragraph 2 of Article 107 of the Constitution);

– rulings issued by the Constitutional Court are binding on all state institutions, courts, all enterprises, establishments, and organisations, as well as on officials and citizens (Paragraph 2 of Article 72 of the Law on the Constitutional Court);

– all state institutions, as well as their officials, must revoke the substatutory acts or their provisions that they have adopted and that are based on an act ruled to be unconstitutional (Paragraph 3 of Article 72 of the Law on the Constitutional Court);

[92]The Constitutional Court's ruling of 16 June 2015. The Register of Legal Acts, 16-06-2015, No. 9641.

–decisions based on legal acts ruled to be in conflict with the Constitution or laws must not be executed if they had not been executed prior to the entry into force of the appropriate ruling of the Constitutional Court (Paragraph 4 of Article 72 of the Law on the Constitutional Court);

– the power of the Constitutional Court to rule a legal act or its part to be unconstitutional may not be overruled by a repeated adoption of anequivalent legal act or its part (Paragraph 5 of Article 72 of the Law on the Constitutional Court).

It is important to note that, for a long time, legal acts did not provide for any procedure or time limits that must be observed by law-making subjects responsible for amending the legal acts declared by the Constitutional Court to be in conflict with the Constitution. This situation changed in 2002. A separate chapter – Chapter XXVIII^{1} – of the Statute of the Seimas was adopted for implementing the rulings, conclusions, and decisions of the Constitutional Court. The said chapter provides that a Deputy Speaker of the Seimas, appointed by the Speaker of the Seimas, is responsible for the supervision in the Seimas of the implementation of the rulings, conclusions, and decisions of the Constitutional Court (Article 181^{1} of the Statute of the Seimas). In addition, Article 181^{2} of the Statue of the Seimas stipulates that the Department of Legal Affairs of the Office of the Seimas must, within one month after the receipt of a ruling of the Constitutional Court by the Seimas and by taking account of the interpretation of the constitutional norms and principles presented in the appropriate ruling of the Constitutional Court, submit its proposals concerning the implementation of the said ruling of the Constitutional Court to the Seimas Committee on Legal Affairs. Not later than within 2 months from the moment when the Seimas receives the appropriate ruling sent to it by the Constitutional Court, such a ruling must be considered by the Seimas Committee on Legal Affairs. Where, according to a ruling of the Constitutional Court, a certain law (or its part) or another act (or its part) is in conflict with the Constitution, not later than within 4 months from the moment when the Seimas receives the appropriate ruling sent to it by the Constitutional Court, the Seimas Committee on Legal Affairs or, on a proposal of this committee, any other Seimas Committee appointed by the Board of the Seimas, or a working group formed by this board, must prepare and submit to the Seimas for consideration a draft amending the law (or its part) or any other act (or its part) adopted by the Seimas that was declared unconstitutional by the Constitutional Court. If the draft is complex, the Board of the Seimas may extend the time limit for its preparation, but such a limit may not exceed 12 months. On a proposal from the Seimas Committee on Legal Affairs, the Board of the Seimas may suggest that the Government prepare a draft amending the appropriate law (or its part). When preparing the aforesaid drafts amending the laws or any other acts adopted by the Seimas, consideration must be taken of the gaps and discrepancy in the relevant legal regulation, as well as of other shortcomings and arguments set out

in the ruling of the Constitutional Court. The Seimas Committee on Legal Affairs must be informed about and must supervise the progress of drafting the said legal acts.

It is clear from the aforementioned provisions of the Constitution and other legal acts that they do not contain any *expressis verbis* requirements for executing constitutional principles; however, in this context, the important fact is that legal subjects are bound not only by the operative parts of the rulings of the Constitutional Court, in which the substance of a ruling of the Constitutional Court is expressed, but also by the reasoning parts of rulings, which present the concept of the provisions of the Constitution and the reasoning and arguments of the Constitutional Court on the basis of whichthe Constitutional Court adopts a concrete decision and formulates the concept of the relevant provisions of the Constitution. The Constitutional Court has held that the provisions of the Constitution – its norms and principles – are interpreted in the acts of the Constitutional Court; the official constitutional doctrine is created and developed in these acts; all law-making and law-applying subjects, including courts, must pay regard to the official constitutional doctrine when they apply the Constitution; they may not interpret the provisions of the Constitution differently from the interpretation provided by the Constitutional Court in its acts; otherwise, the constitutional principle that only the Constitutional Court has the powers to officially interpret the Constitution would be violated, the supremacy of the Constitution would be disregarded, and the preconditions would be created for the emergence of incompatibilities in the legal system; a ruling of the Constitutional Court constitutes an integral whole; all the constituent parts of a ruling of the Constitutional Court are interrelated; therefore, when passing new laws, amending or supplementing laws or other legal acts that are already passed, the state institutions that pass such acts are bound both by the concept of the provisions of the Constitution and by other legal arguments that are presented in the reasoning of the relevant ruling of the Constitutional Court.[93]The Constitutional Court has also noted that law-making and law-applying institutions (officials) are bound by the concept of constitutional provisions and arguments set out not only in the rulings of the Constitutional Court in which the constitutionality of legal acts is assessed but also in other acts of the Constitutional Court, i.e. in its conclusions and decisions. Thus, under the Constitution, the content of all acts of the Constitutional Court in which the Constitution is interpreted, i.e. the official constitutional doctrine is formulated, is also binding on law-making and law-applying institutions (officials), including courts of general jurisdiction and specialised courts.[94]

[93]The Constitutional Court's ruling of 30 May 2003. Official Gazette *Valstybėsžinios,* 2003, No. 53-2361; the Constitutional Court's ruling of 20 September 2005. Official Gazette *Valstybėsžinios,* 2005, No. 113-4132.
[94]The Constitutional Court's ruling of 20 September 2005. Official Gazette *Valstybėsžinios,* 2005, No. 113-4132; the Constitutional Court's ruling of 28 March 2006. Official Gazette *Valstybėsžinios,* 2006, No. 36-1292.

6. What are the basic principles that are applied most by the constitutional court? Please describe a single (or more) constitutional principle that has been largely influenced by constitutional adjudication in your jurisdiction. What contribution does the constitutional court has made in forming and developing of such principle(s)? Please, provide examples from the jurisprudence of the constitutional court.

6. It should be noted that the petitioners impugn the compliance of a legal regulation with **the constitutional principle of a state under the rule of law** most often, compared with all the other constitutional principles; in addition, the petitioners also frequently request an investigation into the compliance of a legal regulation with the constitutional principles of justice and the equality of persons. The constitutional principle of a state under the rule of law is a universal principle, on which the entire legal system of Lithuania and the Constitution itself are based; therefore, undoubtedly, this principle is most often applied by the Constitutional Court. This constitutional principle was revealed most broadly and summarised in the Constitutional Court's ruling of 13 December 2004[95] in the course of assessing the constitutionality of the legal acts that regulated state service relations and the connected relations. Subsequently, the said principle was on more than one occasion developed or supplemented with new aspects that were necessary for the consideration of a concrete constitutional justice case.

The Constitutional Court has held on more than one occasion that the principle of a state under the rule of law, as entrenched in the Constitution,implies, among other requirements, that human rights and freedoms must be ensured, that all institutions exercising state power, other state institutions, municipal institutions, and all officials must act on the basis of law and in compliance with the Constitution and law, that the Constitution is the supreme legal act, and that all other legal acts must be in compliance with the Constitution.

The constitutional principle of a state under the rule of law is especially broad and comprises a wide range of various interrelated principles and imperatives, which were gradually disclosed by the Constitutional Court in its jurisprudence: the hierarchy of legal acts, proportionality, justice, legitimate expectations, legal certainty and legal clarity, legal security, various requirements for the legislature, requirements for the application of law, etc.

The hierarchy of legal acts. The principle of a state under the rule of law, as entrenched in the Constitution, implies the hierarchy of legal acts: *inter alia,*the fact that, in a state under the rule of law, lower-ranking legal acts are prohibited from regulating such social relations that may be regulated only by means of higher-ranking legal acts; also that lower-ranking legal acts are

[95]The Constitutional Court's ruling of 13 December 2004. Official Gazette *Valstybėsžinios,* 2004, No. 181-6708.

prohibited from laying down such a legal regulation that could compete with that established in higher-ranking legal acts;[96]the same principle implies that substatutory legal acts may not be in conflict with laws, with constitutional laws, or with the Constitution; that substatutory legal acts must be adopted on the basis of laws; that a substatutory legal act is an act of the application of the norms of a law irrespective of whether such a substatutory act has one-off *(ad hoc)* application or permanent validity;[97] that substatutory legal acts may not replace a law and may not create any norms of a general character that would compete with the norms of a law, because the supremacy of laws over substatutory acts, which is consolidated in the Constitution, would thus be violated;[98] that laws establish rules of a general character, while substatutory legal acts may particularise such rules and regulate the procedure for their implementation.[99]

It should be noted that the Constitution does not directly specify any concrete mechanism for verifying the compliance of all substatutory legal acts with higher-ranking normative legal acts. Under Article 105 of the Constitution, the Constitutional Court considers and adopts a decision on whether the laws and other acts adopted by the Seimas are in conflict with the Constitution (Paragraph 1), also whether the acts of the President of the Republic and the acts of the Government of the Republic are in conflict with the Constitution and laws (Paragraph 2). The Constitutional Court has held on more than one occasion that the principle of a state under the rule of law, as consolidated in the Constitution, implies the hierarchy of legal acts, in which the Constitution has an exceptional place; in a state under the rule of law, lower-ranking legal acts may not establish any such legal regulation that would compete with a legal regulation established in higher-rankinglegal acts, *inter alia,* in the Constitution itself. Thus, under the Constitution, such legal situations are impermissible where it would not be possible to review in a court whether legal acts (their parts), *inter alia,* legal acts issued by ministers, other lower-ranking substatutorylegal acts, as well as legal acts issued by municipal institutions, whose review as regards their compliance with the Constitution is not prescribed by the Constitution to the jurisdiction of the Constitutional Court, are in conflict with the Constitution and laws. The investigation into the compliance of legal acts ranking lower than laws or other acts adopted by the Seimas, acts of the President of the Republic,or acts of the Government with higher-ranking legal acts is provided for under the Law on the Proceedings of Administrative Cases. Paragraph 1 of Article 112 of the Law on the Proceedings of Administrative Cases provides that "a court of general jurisdiction or court of special jurisdiction

[96]*Inter alia,* the Constitutional Court's ruling of 31 May 2006. Official Gazette *Valstybėsžinios,* 2006, No. 62-2283.
[97]*Inter alia,* the Constitutional Court's ruling of 4 December 2008. Official Gazette *Valstybėsžinios,* 2008, No. 140-5569; the Constitutional Court's ruling of 9 May 2014. The Register of Legal Acts, 12-05-2014, No. 5321.
[98]*Inter alia,* the Constitutional Court's ruling of 21 August 2002. Official Gazette *Valstybėsžinios,* 2002, No. 82-3529; the Constitutional Court's ruling of 28 September 2011. Official Gazette *Valstybėsžinios,* 2011, No. 118-5564.
[99]*Inter alia,* the Constitutional Court's ruling of 26 October 1995. Official Gazette *Valstybėsžinios,* 1995, No. 89-2007; the Constitutional Court's ruling of 9 May 2014. The Register of Legal Acts, 12-05-2014, No. 5321.

shall have the right to suspend the hearing of a case and apply to the administrative court by its ruling requesting a review of whether a concrete normative administrative act (or part thereof) applicable in the case under consideration is in conformity with a law or a normative act of the Government". Paragraph 1 of Article 20 of the same law provides that the Supreme Administrative Court of Lithuania is "the sole and last instance for cases relating to the lawfulness of normative administrative acts adopted by the central entities of state administration". These provisions of the said law give rise to the powers of administrative courts, *inter alia,*the powers of the Supreme Administrative Court of Lithuania, to investigate the compliance of legal acts ranking lower than laws or other acts adopted by the Seimas, acts of the President of the Republic,or acts of the Government with the Constitution and laws. While implementing these powers, administrative courts are bound by the official constitutional doctrine formulated in the acts (rulings, conclusions, and decisions) of the Constitutional Court.[100]

Proportionality. The Constitution does not mention *expressis verbis* the principle of proportionality – it is a derived constitutional principle that was formulated in the doctrine. The Constitutional Court mentioned it for the first time with reference to the jurisprudence of the European Court of Human Rights,[101] but later moved towards the authentic constitutional doctrine whereby the principle of proportionality, as one of the elements of the constitutional principle of a state under the rule of law, means that the measures provided for by law must be in line with legitimate objectives important to society, that these measures must be necessary in order to reach the said objectives, and that these measures must not restrict the rights or freedoms of a person clearly more than necessary in order to reach the said objectives.[102]

Justice. The constitutional principle of a state under the rule of law is inseparable from the principle of justice. Justice is one of the basic objectives of law as a means of regulating social life; it is one of the moral values of the utmost importance and one of the most important foundations of a state under the rule of law; the administration of justice may be carried out where a certain balance of interests is ensured and where fortuity and arbitrariness, the instability of social life, and clashes of interests are avoided.[103]

Legitimate expectations. The principle of the protection of legitimate expectations implies the duty of the state, as well as of the institutions implementing state power and other state institutions, to observe the obligations assumed by the state; the said principle also means the

[100] The Constitutional Court's decision of 20 September 2005. Official Gazette Valstybėsžinios, 2005, No. 113-4132.

[101]The Constitutional Court's ruling of 18 April 1996. Official Gazette *Valstybėsžinios,* 1996, No. 36-915.

[102]*Inter alia,* the Constitutional Court's ruling of 11 December 2009. Official Gazette *Valstybėsžinios,* 2009, No. 148-6632.

[103]*Inter alia,* the Constitutional Court's ruling of 6 December 2000. Official Gazette *Valstybėsžinios,* 2000, No. 105-3318.

protection of acquired rights, i.e. persons have the right to reasonably expect that they will retain their rights, acquired under valid acts that are not in conflict with the Constitution, for the established period of time and will be able to implement such rights in reality.[104] Under this principle, a legal regulation may be changed only by following the procedure established in advance and without violating the principles and norms of the Constitution; it is necessary, *inter alia*, to comply with the principle of *lex retro non agit,* and it is not permitted to deny the legitimate interests and legitimate expectations of persons by amendments to a legal regulation.[105]

Legal certainty and legal clarity. The constitutional doctrine has, on more than one occasion and fromvarious aspects,emphasised the necessity to formulate legal norms clearly and without contradictions. A legal regulation must be clear, comprehensible, and coherent; the formulations in legal acts must be precise; the consistency and internal harmony of the legal system must be ensured; and legal acts may not contain provisions simultaneously regulating the same public relations in a different manner.[106]Otherwise, the ability of the subjects of law to know the demands of law would be undermined.[107]However, at the same time, it needs to be noted that, in general (but not always), the Constitutional Court tends to interpret vague formulations in legal acts in the manner that the implementation of the provisions set out in these formulations would not violate any norms of the Constitution and any constitutional principles; sometimes the Constitutional Court specifically points out that certain vagueness (lack of legislative technique) by itself may not serve as sufficient grounds for declaring a legal act (its part) as unconstitutional.[108]

Legal acts must be published in accordance with the established procedure; all subjects of legal relations should have the opportunity to familiarise themselves with these acts. It is emphasised in the constitutional doctrine that "It is not allowed to require that a certain person obey such rules that did not exist at the time when he/she performed the relevant actions; therefore, such a person was unable to know requirements that could be imposed in the future. A legal subject must be certain that his/her actions performed in compliance with the legal rules that were in force at the time when such actions were performed will be considered lawful. Otherwise, the law itself would lose its authority, which would preclude the establishment of a stable legal order."[109]

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[104]*Inter alia,* the Constitutional Court's ruling of 30 October 2014. The Register of Legal Acts, 30-10-2014, No. 15163.
[105]*Inter alia,* the Constitutional Court's ruling of 18 December 2001. Official Gazette *Valstybėsžinios,* 2001, No. 107-3885.
[106]*Inter alia,* the Constitutional Court's ruling of 13 December 2004. Official Gazette *Valstybėsžinios,* 2004, No. 181-6708; the Constitutional Court's ruling of 29 September 2005. Official Gazette *Valstybėsžinios,* 2005, No. 117-4239.
[107]*Inter alia,* the Constitutional Court's ruling of 29 September 2005. Official Gazette *Valstybėsžinios,* 2005, No. 117-4239.
[108]*Inter alia,* the Constitutional Court's ruling of 23 June 1999. Official Gazette *Valstybėsžinios,* 1999, No. 56-1813.
[109]*Inter alia,* the Constitutional Court's ruling of 16 March 1994. Official Gazette *Valstybėsžinios,* 1994, No. 22-366.

Legal security. The principle of legal security is one of the essential elements of the principle of a state under the rule of law, which is enshrined in the Constitution. The principle of legal security means the duty of the state to ensure the certainty and stability of a legal regulation, to protect the rights of the subjects of legal relations, including acquired rights, and to respect legitimate interests and legitimate expectations. If legal certainty, legal security, and the protection of legitimate expectations are not ensured, the trust of persons in the state and law will not be ensured, either.[110]

Requirements for the legislature. The constitutional principle of a state under the rule of law implies that the legislature and other law-making subjects are subject to various requirements: law-making subjects are allowed to pass legal acts only without exceeding their powers; the requirements established in legal acts must be based on the provisions of a general character (i.e., on certain legal norms and principles), which could be applied to all provided subjects of certain legal relations; any differentiated legal regulation must be based only on objective differences of the situation of the subjects of certain public relations regulated by the respective legal acts; in order to ensure that the subjects of legal relations are aware of the requirements applicable to them under law, legal norms must be established in advance, legal acts must be published officially, and such acts must be public and accessible; a legal regulation established in laws and other legal acts must be clear, comprehensible, and coherent;the formulations in legal acts must be precise; the consistency and internal harmony of the legal system must be ensured; and legal acts may not contain provisions simultaneously regulating the same public relations in a different manner; in order that the subjects of legal relations could act in accordance with the requirements of law, a legal regulation must be relatively stable; legal acts may not demand impossible things *(lex non cogit ad impossibilia);* the effect of legal acts is directed to the future, and the retroactive effect of laws and other legal acts is not permitted *(lex retro non agit),* unless the situation of a subject of legal relations would be alleviated without prejudice to other subjects of legal relations *(lex benignior retro agit);* those violations of law for which liability is established in legal acts must be clearly defined; when imposing legal restrictions and liability for violations of law, regard must be paid to the requirement of reasonableness and the principle of proportionality; according to the said principle, the established legal measures must be necessary in a democratic society and suitable for achieving legitimate and universally important objectives (there must be a balance between such objectives and measures); the said measures may not restrict the rights of persons more than necessary in order to achieve the said objectives, and, if those legal measures are related to the

[110] *Inter alia,* the Constitutional Court's ruling of 13 December 2004. Official Gazette *Valstybėsžinios,* 2004, No. 181-6708.

sanctions for a violation of law, in such a case the aforementioned sanctions must be proportionate to a committed violation of law; when legally regulating certain public relations, it is obligatory to pay heed to the requirements of natural justice, comprising, *inter alia*, the necessity to ensure the equality of persons before the law, the court, state institutions, or officials; legal acts must be passed in accordance with the established procedural law-making requirements, including the requirements established by the law-making subject itself; etc.[111]

Requirements for the application of law. The constitutional principle of a state under the rule of law must also be followed in applying law. When law is applied, *inter alia,* it is necessary to observe the following requirements arising under the constitutional principle of a state under the rule of law: law-applying institutions must comply with the requirement of the equality of the rights of persons; it is not permitted to punish anyone twice for the same violation of law *(non bis in idem);* liability (sanction, punishment) for any violations of law must be established in advance *(nulla poena sine lege);* no act is criminal unless it is defined as such by law *(nullum crimen sine lege),* etc. Based on the constitutional principle of a state under the rule of law, it is required that jurisdictional and other law-applying institutions must be impartial and independent, that they seek to establish the objective truth, and that they adopt their decisions only on the grounds of law.[112]

In fact, the constitutional principle of a state under the rule of law (or individual elements of this principle) is one of the most important benchmarks for interpreting the provisions of the Constitution. Actually, it is not only possible, but it is also necessary to look at any constitutional norm or constitutional principle through the prism of a state under the rule of law. This is the only way in which a balance and harmony among the most varied constitutional norms and principles can be achieved.

II. Constitutional principles as higher norms? Is it possible to determine a hierarchy within the Constitution? Unamendable (eternal) provisions in Constitutions and judicial review of constitutional amendments.

1. Do the constitutional principles enjoy certain degree of superiority in relation to other provisions in the basic law? How are constitutional principles and other constitutional provisions related to international law and/or to the European Union law? Are there any provisions in international or the European Union law that are deemed superior than the

[111] *Inter alia,* the Constitutional Court's ruling of 13 December 2004. Official Gazette *Valstybėsžinios,* 2004, No. 181-6708; the Constitutional Court's ruling of 16 January 2006. Official Gazette *Valstybėsžinios,* 2006, No. 7-254.

[112] *Inter alia,* the Constitutional Court's ruling of 11 May 1999. Official Gazette *Valstybėsžinios,* 1999, No. 42-1345, correction 19-05-1999, No. 43; the Constitutional Court's ruling of 13 December 2004. Official Gazette *Valstybėsžinios,* 2004, No. 181-6708.

national constitutional principles? If yes, how such higher international provisions are applied with regard to the national constitutional principles? What is the prevailing legal opinion among both academic scholars and practitioners in your jurisdiction about attaching higher value to certain constitutional principles over other provisions of basic law?

1. The Constitutional Court has held on more than one occasion that the principles and norms of the Constitution constitute a harmonious system; therefore, no provision of the Constitution may be interpreted in such a way that the substance of the content of another constitutional provision would be denied.[113] The Constitutional Court considers that there may not exist and there is no contradiction between constitutional principles and constitutional norms – all constitutional norms and constitutional principles form a harmonious system. It is constitutional principles that organise all the provisions of the Constitution and make them a harmonious entirety; constitutional principles do not permit the existence in the Constitution of any internal contradictions or any such interpretation that could distort or deny the meaning of any provision of the Constitution, or any value entrenched in or protected by the Constitution.[114]

Thus, if the Constitution is understood as the whole of the legal norms and principles consolidated in the Constitution, if it is understood as an integral and harmonious system in which all the provisions are in harmony and balance, it should be held that the Constitution does not contain any gaps, that there are no contradictions among the provisions of the Constitution, and that **all the norms and principles of the Constitution, including its Preamble, have the same supreme legal force.**Constitutional principles are neither "above" nor "beside" constitutional norms, or rather, the relation between constitutional principles and constitutional norms should be described as follows: "Constitutional principles form a certain 'framework' for the constitutional regulation; it is on this 'framework' that normative material is 'shaped'."[115] The actual content of the constitutional regulation can be disclosed only when constitutional norms are analysed in the context of constitutional principles.

In answering the question about the relation of constitutional principles and other constitutional norms with international law and EU law, it should be mentioned that, as established under Paragraph 3 of Article 138 of the Constitution, international treaties ratified by the Seimas are a constituent part of the legal system of the Republic of Lithuania. Interpreting this provision, the

[113]*Inter alia,* the Constitutional Court's ruling of 12 July 2001. Official Gazette *Valstybėsžinios,* 2001, No. 62-2276, correction 10-10-2001, No. 86; the Constitutional Court's ruling of 5 September 2012. Official Gazette *Valstybėsžinios,* 2012, No. 105-5330.
[114]*Inter alia,* the Constitutional Court's ruling of 25 May 2004. Official Gazette *Valstybėsžinios,* 2004, No. 85-3094.
[115]SINKEVIČIUS, V. Konstitucijosinterpretavimoprincipaiirribos [The Principles and Limits of Interpretation of the Constitution]. *Jurisprudencija,* 2005, vol. 67(59), p. 9.

Constitutional Court has held that the said provision means that international treaties ratified by the Seimas acquire the force of a law.[116] Taking account of the principle of respect for international law, as consolidated in Paragraph 1 of Article 135 of the Constitution,[117] the Constitutional Court has held that the doctrinal provision that the international treaties ratified by the Seimas acquire the force of a law may not be interpreted as meaning that, purportedly, the Republic of Lithuania may disregard its international treaties if its laws or constitutional laws contain a legal regulation that is different from the one established in international treaties.[118] The Constitution also consolidates the principle that in those cases where a national legal act (with the exception of the Constitution itself) establishes such a legal regulation that competes with the one established in an international treaty, the international treaty must be applied.[119]

On the other hand, the Constitutional Court has also noted that the legal system of the Republic of Lithuania is based on the fact that any law or other legal act, as well as any international treaty of the Republic of Lithuania, may not be in conflict with the Constitution.[120]Obviously, this constitutional provision may not invalidate an international treaty, but it demands that the provisions of such a treaty be in compliance with those of the Constitution; otherwise, given the fact that, in cases where a legal regulation consolidated in an international treaty ratified by the Seimas competes with the one laid down in the Constitution, such provisions of an international treaty do not take primacy, the Republic of Lithuania would not be able to ensure the legal protection of the rights of the parties of international treaties where the said rights arise from such treaties, and this, in its turn, would hamper the fulfilment of the obligations according to the concluded international treaties.[121] Therefore, the Constitutional Court has held that, in the event of incompatibility between an international treaty of the Republic of Lithuania and the provisions of the Constitution, the duty arises, under Paragraph 1 of Article 135 of the Constitution, for the Republic of Lithuania to remove the said incompatibility, *inter alia,* either by renouncing the international obligations established under the international treaty in the manner prescribed by the norms of international law or by making the appropriate amendments to the Constitution.[122]

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[116]*Inter alia,* the Constitutional Court's conclusion of 24 January 1995. Official Gazette *Valstybėsžinios,* 1995, No. 9-199.
[117]"In implementing its foreign policy, the Republic of Lithuania shall follow the universally recognised principles and norms of international law, shall seek to ensure national security and independence, the welfare of its citizens, and their basic rights and freedoms, and shall contribute to the creation of the international order based on law and justice."
[118]*Inter alia,* the Constitutional Court's ruling of 14 March 2006. Official Gazette *Valstybėsžinios,* 2006, No. 30-1050.
[119]*Inter alia,* the Constitutional Court's ruling of 5 September 2012. Official Gazette *Valstybėsžinios,* 2012, No. 105-5330.
[120]The Constitutional Court's ruling of 18 March 2014. The Register of Legal Acts, 19-03-2014, No. 3226.
[121]Cf. the Constitutional Court's ruling of 5 September 2012. Official Gazette *Valstybėsžinios,* 2012, No. 105-5330.
[122]The Constitutional Court's ruling of 18 March 2014. The Register of Legal Acts, 19-03-2014, No. 3226.

Under Paragraph 2 of the Constitutional Act "On Membership of the Republic of Lithuania in the European Union", which is a constituent part of the Constitution, the norms of European Union law are a constituent part of the legal system of the Republic of Lithuania. The Constitutional Court has held that Article 2 of the Constitutional Act establishes *expressis verbis* the collision rule concerning EU law, entrenching the priority of the application of legal acts of the European Union in cases where the provisions of EU law arising from the founding Treaties of the European Union compete with the legal regulation established in Lithuanian national acts (regardless of their legal force), **with the exception of the Constitution itself.**[123]

Thus, Lithuania may be regarded as belonging to the group of EU states in which the application of the national constitution takes primacyover the application of EU law. The same may be said about the relation between the Constitution and international law. It should be mentioned that the scholarly literature asserts that some constitutional courts in Eastern and Central Europe took a sufficiently balanced approach in the process of European integration,and none of them openly opposed the supremacy of EU law over national law (especially, over ordinary law); however, except Estonia (which can be regarded as an example of courts that have recognised the ultimate supremacy of EU law over national law), other constitutional courts of this region were very cautious in expressing their views on the relation between EU law and the provisions of the constitutions.[124]

In the legal scientific doctrine, there is the opinion that constitutional courts cannot recognise the supremacy of any other law over the national constitution due to the very reason that the constitution is the source of their existence.[125] Constitutional courts are creations of the respective national constitutions and are obliged to act as their guardians. Only the Constitution as supreme law serves as the basis for applying EU law by the Constitutional Court, since, as such, the membership of Lithuania in the EU is also based on the Constitution.[126] The Constitution itself is the main guideline for the Constitutional Court; therefore, the dimension of EU law emerges from specific aspects in constitutional justice cases.[127]

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[123]*Inter alia,* the Constitutional Court's ruling of 14 March 2006. Official Gazette *Valstybėsžinios,* 2006, No. 30-1050.

[124]PIQANI, D. *Constitutional Courts in Central and Eastern Europe and Their Attitude Towards European Integration*[accessed on 29 July 2016]. Access on the internet: <http://www.ejls.eu/2/28UK.pdf>.

[125]DE WITTE, B. Constitutional Aspects of European Union Membership in the Original Six Member States: Model Solutions for the Applicant Countries? In KELLERMANN, A.E.;et al.*EU Enlargement: The Constitutional Impact at EU and National Level*. The Hague: Asser, 2001, p. 77.

[126]JARAŠIŪNAS, E. Kelios mintys apie Lietuvos dalyvavimo tarptautiniuose santykiuose konstitucinius pagrindus [Quelques considérations sur les fondements constitutionnels de la participation de la Lituanie dans les relations internationales]. In *Teisėbesikeičiančiojeuropoje: Liber AmicorumPranasKūris [Law in the Changing Europe: Liber AmicorumPranasKūris]*, p. 630.

[127]JARAŠIŪNAS, E. KeletasnacionaliniųteismųirEuroposSąjungosTeisingumoTeismoveiksmingobendradarbiavimoužtikrinimoaspektų

However, it is important to note that the Constitution itself contains certain principles and provisions that harmonise the constitutional regulation with the corresponding norms of international law and EU law; the said harmonising principles and provisions provide the Constitutional Court with the opportunity to take into consideration supranational legal factors while developing the official constitutional doctrine.[128] As noted by the Constitutional Court on more than one occasion, the observance of international obligations undertaken of free will and respect for the universally recognised principles of international law (as well as the principle of *pacta sunt servanda)* are a legal tradition and a constitutional principle of the restored independent State of Lithuania.[129]

Respect for international law is an inseparable part of the constitutional principle of a state under the rule of law, the essence of which is the rule of law. This constitutional principle also embodies the striving for an open, just, and harmonious civil society and a state under the rule of law, as consolidated in the Preamble to the Constitution. The Constitutional Court has emphasised that respect for international law is also linked to the striving for an open, just, and harmonious civil society; this striving implies openness to universal democratic values and integration into the international community founded on these values.[130]

In this context, it is also important to mention the content of another constitutional principle that was revealed in the jurisprudence of the Constitutional Court: the geopolitical orientation of the Republic of Lithuania. In its ruling of 7 July 2011, the Constitutional Court held that the geopolitical orientation of the State of Lithuania means the membership of the Republic of Lithuania in the EU and NATO, as well as the necessity to fulfil the respective international obligations related with the said membership.[131]The Constitutional Court's ruling of 24 January 2014[132] reflects the commonness of values shared with Western democratic states, as the foundation of the geopolitical orientation of Lithuania. The Constitutional Court noted that the fundamental constitutional values consolidated in Article 1 of the Constitution – the independence of the state, democracy, the republic – are closely interrelated with the geopolitical orientation of the state; the

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[Several Aspects of the Effectiveness of the Cooperation Between National Courts and the Court of Justice of the European Union]. *Konstitucinėjurisprudencija*, 2013, No. 4(32), p. 232.

[128]ŽALIMAS, D. TarptautinėsirEuroposSąjungosteisėsvaidmuoplėtojantoficialiąjąkonstitucinėdoktriną [The Role of International and European Union Law in the Development of the Official Constitutional Doctrine]. In *Šiuolaikinėskonstitucinėsjusticijostendencijos: nacionalinėsirtarptautinėsteisėssantykis [Modern Tendencies of Constitutional Justice: The Relation Between National and International Law]*. Managing editor T. Birmontienė. Vilnius: The Constitutional Court of the Republic of Lithuania, 2014, p. 295.

[129]*Inter alia,* the Constitutional Court's ruling of 14 March 2006. Official Gazette *Valstybėsžinios,* 2006, No. 30-1050.

[130]The Constitutional Court's ruling of 18 March 2014. The Register of Legal Acts, 19-03-2014, No. 3226.

[131]The Constitutional Court's ruling of 7 July 2011. Official Gazette *Valstybėsžinios,* 2011, No. 84-4106.

[132] In the Constitutional Court's rulings of 24 January 2014 and 11 July 2014, the official constitutional doctrine of the geopolitical orientation of the Republic of Lithuania was developed in the context of the constitutionality of certain amendments to the Constitution.

said geopolitical orientation is consolidated in the Constitution and implies European and transatlantic integration pursued by the Republic of Lithuania. Such geopolitical orientation of Lithuania is based on the recognised and protected universal constitutional values that are shared by other European and North American states. In the Constitutional Court's rulings of 24 January 2014 and 11 July 2014, the official constitutional doctrine was developed in the context of the constitutionality of amendments to the Constitution (for more information on this matter, see *the answer to question 6 of part II of the Questionnaire).*

Thus, the Lithuanian constitutional identity, founded on such fundamental constitutional values as the independence of the state, democracy, and the innate nature of human rights and freedoms, should be understood in a broader context, as an integral part of the democratic constitutional identity of Western states.[133]

2. How are the constitutional principles related to each other? Is there any hierarchy within those principles? What approach has the constitutional court taken in terms of determining a hierarchy within the constitution? Is it possible to conclude from the jurisprudence of the constitutional court that it has given principal status to some constitutional principles over the rest of the basic law?

2. As mentioned before, the Constitutional Court has held on more than one occasion that the principles and norms of the Constitution constitute a harmonious system; therefore, no provision of the Constitution may be interpreted in such a way that the substance of the content of another constitutional provision would be denied. The Constitutional Court considers that there may not exist and there is no contradiction between constitutional principles and constitutional norms – all constitutional norms and constitutional principles form a harmonious system.[134] Thus, all principles have the same (supreme) legal force; therefore, it would be inaccurate to speak of any hierarchy of such principles: implicit principles are not "less normative" in any way: they are neither less binding nor more important than those from which such implicit principles were derived.[135] Still, in this context, it is important to note that the Constitutional Court has declared several constitutional principles as fundamental ones. Such principles are: the independence of the state; democracy; the

[133]ŽALIMAS, D. The Principle of the Geopolitical Orientation of the State in the Constitution of the Republic of Lithuania [accessed on 21 July 2016]. Access on the internet: <http://lrkt.lt/data/public/uploads/2015/04/zalimas_en2014-10-24.pdf>.

[134]*Inter alia,* the Constitutional Court's ruling of 12 July 2001. Official Gazette *Valstybėsžinios,* 2001, No. 62-2276, correction 10-10-2001, No. 86; the Constitutional Court's ruling of 5 September 2012. Official Gazette *Valstybėsžinios,* 2012, No. 105-5330.

[135]KŪRIS, E. KonstituciniaiprincipaiirKonstitucijostekstas [Constitutional Principles and the Text of the Constitution]. *Jurisprudencija,* 2002, vol. 24(16), p. 61.

republic as the form of government; and the innate nature of human rights and freedoms (for more information on this matter, see *the answer to question 2.1 of part I of the Questionnaire).*

3. How is the constitution amended in your jurisdiction? What is the procedure for the constitutional amendment set out in the basic law? How the constitution was established originally and does it explicitly provide for unamendable (eternal) provisions? Is there any difference between the initial manner of constitutional adoption and the existing procedure of the amendment to the basic law? Have the constitutional principles ever been subjected to change in your jurisdiction? If yes, what were the reasons behind it?

3.The Constitution of the Republic of Lithuania was adopted by the citizens of the Republic of Lithuania in the referendum of 25 October 1992. With the aim of conducting this referendum, the Law "On a Referendum on Adopting the Constitution of the Republic of Lithuania" was passed. This law provided that citizens were free to choose to participate in the referendum and established that the referendum was based on universal, equal, and direct suffrage by secret voting. The right to participate in the referendum was granted to the citizens of the Republic of Lithuania who, on the day of the referendum, had reached 18 years of age. The law prescribed that the Constitution would be considered adopted if more than half of all the citizens of the Republic of Lithuania with the electoral right approved it in the referendum. Article 151 of the new Constitution stipulated that the Constitution would come into force on the day following the official publication of the results of the referendum provided that more than half of the citizens of the Republic of Lithuania with the electoral right gave their consent to this Constitution in the referendum. In the referendum held on 25 October 1992, 56.7 percent of all the citizens of the Republic of Lithuania entered on the lists of voters cast their votes in favour of the Constitution. The Constitution came into force on 2 November 1992.

In this context, mention should be made of an important aspect of the Lithuanian constitutional system: the Constitution provided for a simplified procedure for amending certain constitutional provisions during a particular period of time. In the course of preparing the final wording of the text of the Constitution, it was decided to establish a simplified amendment procedure applicable for a specific period of time with regard to certain articles of the Constitution (on which it was particularly difficult to reach a consensus and the final wordings of which were especially subject to compromise). Consequently, the "Final Provisions" of the Constitution included Article 153 providing that: "After the adoption of this Constitution of the Republic of Lithuania by referendum, the Seimas of the Republic of Lithuania, by 25 October 1993, may alter, by a 3/5 majority vote of all the Members of the Seimas, the provisions of this Constitution of the

Republic of Lithuania contained in Articles 47, 55, 56, Item 2 of the second paragraph of Article 58, in Articles 65, 68, 69, Items 11 and 12 of Article 84, the first paragraph of Article 87, in Articles 96, 103, 118, and in the fourth paragraph of Article 119." Nevertheless, this simplified procedure was not used during the prescribed period.

To specify in greater detail, it should be noted that the Constitution is categorised as one of those constitutions whose alteration is subject to rather strict requirements. The rules governing the submission, consideration, and adoption of constitutional amendments are consolidated in Chapter XIV "The Alteration of the Constitution" of the Constitution (Articles 147–149).

Under Article 147 of the Constitution, a motion to alter or supplement the Constitution of the Republic of Lithuania may be submitted to the Seimas by a group of not less than 1/4 of all the members of the Seimas (i.e., at least 36 members of the Seimas) or not less than by 300,000 voters. The Constitutional Court, in its ruling of 24 January 2014, held that only the aforementioned subjects have the right to submit to the Seimas a concrete draft constitutional amendment, i.e. a draft law amending the Constitution. The said right is not conferred on any other subjects. Thus, under the Constitution, only the draft laws amending the Constitution that have been submitted by a group of not less than 1/4 of all the members of the Seimas or not less than 300,000 voters may be considered and voted upon by the Seimas; the Seimas may not consider any such motion to alter or supplement the Constitution that would be proposed by subjects other than the subjects specified in Paragraph 1 of Article 147 of the Constitution.[136]

It is important to note that Paragraph 1 of Article 147 of the Constitution explicitly prescribes that the Constitution may not be amended during a state of emergency or martial law. In terms of the prohibitions established concerning the alteration of the Constitution, it is also pertinent to mention the provision of Paragraph 4 of Article 148 of the Constitution, stipulating that a failed amendment to the Constitution may be submitted to the Seimas for reconsideration not earlier than after one year. The aim of this restriction is to prevent the provisions that initially received no support from being reconsidered before the expiry of a longer period.

The particularities concerning the adoption of amendments to separate provisions and other parts of the Constitution are set out in Article 148 of the Constitution. Under this article, the provision "The State of Lithuania shall be an independent democratic republic" of Article 1 of the Constitution may be altered only by referendum and if not less than 3/4 of the citizens of Lithuania with the electoral right vote in favour of such an amendment. The provisions of Chapter I "The State of Lithuania" and Chapter XIV "The Alteration of the Constitution" may be altered only by

[136]The Constitutional Court's ruling of 24 January 2014. The Register of Legal Acts, 01-24-2014, No. 478.

referendum.[137] As stipulated in Article 1 of the Constitutional Law "On the Sate of Lithuania", the statement "The State of Lithuania shall be an independent democratic republic" is a constitutional norm of the Republic of Lithuania and a fundamental principle of the state. This constitutional norm and the fundamental principle of the state may be altered only by a general poll (plebiscite) of the Nation of Lithuania provided that not less than 3/4 of the citizens of Lithuania with the active electoral right vote in favour (Article 2 of the Constitutional Law "On the Sate of Lithuania").

While clarifying, *inter alia*, the aforementioned constitutional provisions, it was noted in the Constitutional Court's ruling of 24 January 2014 that the Constitution does not permit such amendments thereto that would deny any of the values lying at the foundations of the State of Lithuania – the independence of the state, democracy, the republic, and the innate nature of human rights and freedoms, with the exception of the cases where Article 1 of the Constitution would be altered in the manner prescribed by Paragraph 1 of Article 148 of the Constitution, or Article 1 of the Constitutional Law "On the State of Lithuania" would be altered in the manner prescribed by Article 2 of this law (i.e., only by referendum, if not less than 3/4 of the citizens of Lithuania with the electoral right vote in favour). While elaborating on this interpretation of the constitutional provisions consolidating the fundamental constitutional values of the State of Lithuania, in its ruling of 11 July 2014, the Constitutional Court emphasised that the innate nature of human rights, democracy, and the independence of the state are such constitutional values that constitute the foundation for the Constitution, as a social contract, as well as the foundation for the Nation's common life, which is based on the Constitution, and the foundation for the State of Lithuania itself. No one may deny the provisions of the Constitution consolidating these fundamental constitutional values, since doing so would amount to the denial of the essence of the Constitution itself. Therefore, even in cases where regard is paid to the limitations on the alteration of the Constitution that stem from the Constitution itself, it is not permitted to adopt any such amendments to the Constitution that would destroy the innate nature of human rights, democracy, or the independence of the state. If the Constitution were interpreted in a different way, it would be understood as creating the preconditions for abolishing the restored "independent State of Lithuania, founded on democratic principles", as proclaimed by the Act of Independence of 16 February 1918.[138]

Thus, the statement "No one may change the provisions of the Constitution consolidating these fundamental constitutional values", as formulated by the Constitutional Court in its ruling of

[137]The constituent branch of government paid considerable attention to the protection of the stability of these chapters of the Constitution, since the provisions of Chapter I "The State of Lithuania" of the Constitution provide orientation for the whole constitutional system, and the provisions of Chapter XIV "The Alteration of the Constitution" constitute one of the guarantees of the stability of the constitutional regulation.

[138]The Constitutional Court's ruling of 11 July 2014. The Register of Legal Acts, 07-11-2014, No. 10117.

11 July 2014, means that the Constitution lays down the absolute prohibition on making any such amendments to the Constitution that would deny the innate nature of human rights and freedoms, democracy, or the independence of the state.

In this context, it is worthwhile pointing out that scholarly sources express the position that "All constitutional arrangements include superconstitutional provisions or principles which are regarded as unamendable".[139] The constitutions of certain states (e.g., France, Romania, Ukraine) consolidate such "eternal clauses" explicitly; in other cases, these provisions are entrenched in the constitutions not *expressis verbis* but implicitly and are clarified in the process of the interpretation of the respective constitution. The existence of fundamental constitutional principles (values) that may not be denied by any amendments to the constitution was similarly stated in the jurisprudence of the constitutional courts of other states.[140]

In its ruling of 24 January 2014, the Constitutional Court also interpreted that the provisions of the Constitutional Act "On the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions" may be altered only by referendum if not less than 3/4 of the citizens of Lithuania with the electoral right vote in favour. In the same ruling, it is also held that the provisions of Articles 1 and 2 of the Constitutional Act "On Membership of the Republic of Lithuania in the European Union" may be altered only by referendum.

Under Paragraph 3 of Article 148 of the Constitution, constitutional amendments concerning other chapters of the Constitution must be considered and voted at the Seimas twice. There must be a break of not less than three months between these votes. A draft law amending the Constitution is considered adopted by the Seimas if, during each of the votes, not less than 2/3 of all the members of the Seimas vote in favour of it.

The requirement for voting twice with a mandatory break between the votes slows down the process of constitutional amendments, provides the opportunity to give more thought as to whether the amendments to the Constitution are necessary, and protects against spontaneous and insufficiently well thought out decisions by the constitutional majority of the Seimas. During the period until the second voting, it is possible to reconsider whether the constitutional amendment is indeed necessary and whether it brings no danger of destroying the system of constitutional values or disrupting the integrity and harmony of the Constitution, and to ascertain whether the first

[139]FUSARO, C.; OLIVER, D. *Towards a Theory of Constitutional Change. How Constitutions Change.* Oxford: Hart Publishing Ltd., 2011, p. 428.

[140]For instance, in its case *SouthwestState(*l *BVerfGE)* in 1951, the Federal Constitutional Court of Germany emphasised that there are constitutional principles that are so fundamental and so much an expression of a law that they have precedence even over the constitution and that they also bind the framers of the constitution (KOMMERS, D. P. *The Constitutional Jurisprudence of the Federal Republic of Germany*. Durham: Duke University Press, 1997, p. 63). The Constitutional Court of Italy, in its judgment No. 1146/1988, held that the Italian Constitution embodies certain supreme principles that cannot be amended by a constitutional reform or other constitutional laws (BONGIOVANNI, G.; SARTOR, G.; VALENTINI, CH. Reasonableness and Law. Netherlands: Springer, 2009, p. 234).

consideration of the constitutional amendment and voting on it by the Seimas was free of violations of the established procedure for constitutional amendments.

Article 149 of the Constitution prescribes that the President of the Republic signs an adopted law on the alteration of the Constitution and officially promulgates it within five days. If the President of the Republic does not sign and promulgate such a law within the specified period, the law comes into force after it is signed and officially promulgated by the Speaker of the Seimas. In its ruling of 19 June 2002, the Constitutional Court held that the Constitution does not provide that the President of the Republic has the right of delayed veto in connection with laws adopted by referendum and laws amending the Constitution. Under the Constitution, the President of the Republic has such a right only with regard to laws adopted by the Seimas, with the exception of laws amending the Constitution.[141]

In addition, Article 149 of the Constitution stipulates that a law amending the Constitution comes into force not earlier than one month after its adoption. While interpreting this provision, the Constitutional Court noted that, under Paragraph 3 of Article 149 of the Constitution, in a law amending the Constitution, the Seimas may set the date when the law amending the Constitution comes into force; however, it is not permitted to set an earlier date than one month after the adoption of the law amending the Constitution. While adopting a law amending the Constitution, the Seimas may establish that the law amending the Constitution comes into force only at a later date than one month after the adoption of this law. If a law amending the Constitution does not set a date for its entry into force, then, under the Constitution, such a law amending the Constitution comes into force one month after its adoption.[142]

It should be noted that, during the period of twenty four years of the validity of the Constitution of the Republic of Lithuania, there have been numerous proposals to amend it; however, political forces have only been able to successfully agree regarding constitutional amendments on **nine occasions**. The main part of these constitutional amendments is related to European integration and membership of the Republic of Lithuania in the European Union: Article 47 of the Constitution was amended in 1996 and 2003 to consolidate the right of foreign entities to acquire land, internal waters, and forests according to the constitutional law; subsequently, the Constitution was supplemented with the Constitutional Act "On Membership of the Republic of Lithuania in the European Union" adopted in 2004and Article 150 of the Constitution was amended; in 2006, an amendment was made to Article 125 of the Constitution. This group of constitutional amendments can also partly be considered to include the amendment made to Article

[141]The Constitutional Court's ruling of 19 June 2002. The Official Gazette, *Valstybėsžinios,* 2002, No. 62-2515.
[142]The Constitutional Court's ruling of 24 December 2002. The Official Gazette, *Valstybėsžinios,* 2003, No. 19-828.

119 of the Constitution in 2002, which established that the right to participate in municipal elections is granted not only to the citizens of the Republic of Lithuania but also other permanent residents of the respective administrative units. Another group of amendments is related to the correction of the constitutional institute of self-government (the amendment made to Article 119 of the Constitution in 1996, as well as the aforementioned amendment to Article 119 of the Constitution in 2002). The third group of amendments was linked to the aim of improving the organisation and functioning of the institutional system of the state. In 2003, amendments were made to Article 118 of the Constitution, which consolidates the foundations for the organisation and activity of the Prosecution Service, and certain corrections were introduced concerning the powers of the President of the Republic (by supplementing Article 84 of the Constitution). In 2004, an amendment was adopted to Article 57 of the Constitution, which sets the time for conducting regular elections to the Seimas.

4. Should constitutional amendment procedure be subjected to judicial scrutiny or should it be left entirely up to the political actors? What is the prevailing legal opinion in this regard among academic scholars and other societal groups in your jurisdiction?

4. In addressing issues concerning the constitutionality of constitutional amendments in the science of constitutional law, rather complicated questions are raised, such as: whether constitutional courts have the right to review the constitutionality of constitutional amendments in cases where the constitution does not explicitly provide for such powers? If so, what are the criteria against which the review of constitutional amendments must be carried out? May constitutional courts derive from the constitution any substantive requirements implicitly entrenched therein with regard to amendments to the constitution? What status do the constitutional justice institutions have in society if these institutions, which are not directly elected by the nation, have the right to invalidate decisions adopted by the representatives of the nation, or by referendum, regarding constitutional amendments? Although these questions are complicated, it would be appropriate to agree with the position expressed by Aharon Barak, one of the most famous world legal authorities, that "… In a democratic society, the role of the court is to protect the constitution and democracy. Protecting the constitution does not only involve protection against statutes that violate the constitution but also against amendments to the constitution that violate its foundations. The role of the court is to protect the basic structure and fundamental values of the constitution. There is thus a strong justification for recognizing the court's authority to examine whether an amendment to the constitution is constitutional".[143]

[143]BARAK, A. Unconstitutional Constitutional Amendments.*Israel Law Review,* 2011, 44, pp. 321–341.

When a constitution is in force for a longer time, initiatives to amend or repeal some of its provisions or supplement it with new ones are introduced sooner or later. Irrespective of the aims on which a proposal to amend a constitution is based or how it is proposed to correct the content of the constitutional regulation, the constitution itself consolidates a mechanism for its self-protection against inadmissible, unnecessary, unfounded, or hasty amendments. This mechanism is a procedure for introducing constitutional amendments, which lays down substantive and procedural limitations on the alteration of the constitution.

Constitutional courts are the main guardians of the constitutions. Thus, they must safeguard the constitutions not only against ordinary laws that are in conflict with the constitutions but also against those laws amending the constitutions that violate the essence of the constitutions themselves. There is no alternative means of ensuring that the constitution will be amended in compliance with the procedure prescribed by the constitution and that the fundamental values enshrined in the constitution will be respected. The idea of the judicial constitutional review of constitutional amendments is based on the fact that the constitutional court must ensure that the legislature (as well as the nation, directly implementing its sovereign powers in referendums) would exercise its powers, including in the area of constitutional amendments, under the procedure established in the constitution. Thus, the judicial review of constitutional amendments is one of the ways to ensure the supremacy of the constitution.

In the constitutions of states around the world, the possibility of the review of the constitutionality of constitutional amendments is rarely mentioned *expressis verbis* (such explicit provisions can be found in the Hungarian, Moldovan, Romanian, Turkish, and Ukrainian constitutions); therefore, naturally, legal provisions concerning the unconstitutionality of constitutional amendments are revealed in the official constitutional doctrine formulated when the constitutional justice institutions decide various constitutional justice cases related to amendments to the constitutions. In the scientific works where the jurisprudence of the Federal Constitutional Court of Germany is examined, it is emphasised that "the doctrine of the unconstitutional constitutional amendment is one of several unwritten constitutional principles the court has deduced from the overall structure of the Basic Law".[144] Thus, if the judicial constitutional review of constitutional amendments is not explicitly consolidated in the constitution or law regulating the activity of the constitutional court, it should be understood as implicitly stemming from the *raison d'être* of constitutional courts as the guardians of the constitution. The judicial constitutional review of constitutional amendments is an immanent function of constitutional justice.

[144]KOMMERS, D. P. *The Constitutional Jurisprudence of the Federal Republic of Germany*, p. 55.

In the Lithuanian scientific legal doctrine, the positive assessment of the powers of the Constitutional Court to verify the constitutional compliance of amendments to the Constitution prevails. It is maintained that, under the Constitution, the laws and the Statute of the Seimas regulating the procedures for amending the Constitution should establish such a legal regulation that would permit the *a priori* verification of whether a submitted amendment to the Constitution complies with the Constitution (i.e., before an amendment is put to a referendum or is adopted at the Seimas) and, in cases where an amendment does not comply with the Constitution, would permit preventing the adoption of such an amendment. The Constitution also requires establishing such a legal regulation that would permit the *a posteriori* verification of the constitutionality of constitutional amendments adopted by referendum or by means of a law passed by the Seimas andwould provide for the removal of amendments from the Constitution in cases where such amendments do not comply with the Constitution. In all cases, a final decision concerning the compliance of constitutional amendments with the Constitution may be adopted only by a court.[145] Lithuanian scientific works in the field of law[146] accept the opinion expressed by foreign authors that "… there is no hierarchy among the norms of the constitution. However, those constitutional norms that are established by means of amendments to the constitution may not be exempt from the review of their constitutionality. From the constitutional point of view, it would be unreasonable to remove constitutional amendments from the objects subject to the review of constitutional legitimacy, as such amendments might be adopted in violation of the procedure established for the adoption of constitutional amendments, or they may modify those constitutional provisions that may not be altered. Thus, the changes of the constitutional regulation should be reviewed by a court".[147]At the same time, it is emphasised that the judicial constitutional review of constitutional amendments must be conducted by the Constitutional Court.[148]

In the context of the issue in question, mention should be made of the debate that took place in Lithuania at the end of 2013 regarding the constitutionality of constitutional amendments. This debate ensued after an initiative group of citizens collected more than 300,000 signatures of citizens requesting to call a referendum on amendments to Articles 9, 47, and 147 of the Constitution and submitted those signatures to the Central Electoral Commission. It was proposed to establish, in Article 47 of the Constitution, *inter alia*, that "the land, as well as the internal waters, forests, and parks, shall belong by right of exclusive ownership to the Republic of Lithuania and its citizens". If

[145]SINKEVIČIUS, V. Konstitucijoskeitimoapribojimai [Limitations on the Alteration of the Constitution]. *Jurisprudencija*, 2015, 22(2), p. 226.
[146]BUTVILAVIČIUS, D. *Amendments to theConstitution*. Doctoral dissertation. Social Sciences (Law 01 S). Vilnius: Mykolas Romeris University, 2013, pp. 52–57.
[147]DA SILVA, J.A. *DireitoConstitucionalPositivoBrasileiro*. São Paulo: Malheiros, 1996, p. 70.
[148]BUTVILAVIČIUS, D. *Amendments to theConstitution*,p. 208.

such a constitutional amendment had been made, two provisions denying each other would have appeared in the Constitution: under Article 47 of the Constitution, the citizens of foreign states, as well as foreign legal persons and Lithuanian legal persons, would have not been able to acquire by right of ownership any land, forests, or internal waters; whereas, under the Constitutional Act "On Membership of the Republic of Lithuania in the European Union", which is a constituent part of the Constitution, the citizens of foreign states, as well as foreign legal persons and Lithuanian legal persons, would be able to acquire by right of ownership land, forests, and internal waters, because EU law, which has become part of the Lithuanian legal system, provides for the free movement of capital. The initiators of the referendum argued that no one may limit the will of the Nation. They drew on the provision of Article 2 of the Constitution that "The State of Lithuania shall be created by the Nation. Sovereignty shall belong to the Nation", as well as on the provision of Article 4 of the Constitution that "The Nation shall execute its supreme sovereign power either directly or through its democratically elected representatives" and the provision of Article 3 of the Constitution that "No one may restrict or limit the sovereignty of the Nation or arrogate to himself the sovereign powers belonging to the entire Nation". The initiators of the referendum also invoked the provisions of Article 9 of the Constitution consolidating that "The most significant issues concerning the life of the State and the Nation shall be decided by referendum" and that "A referendum shall also be called if not less than 300,000 citizens with the electoral right so request".

In the light of the foregoing, the Constitutional Court's ruling of 24 January 2014 is of particular relevance; in this ruling, it was held that no amendments to the Constitution may set any provisions of the Constitution, or values consolidated in those provisions, against one another; *inter alia*, no legal regulation established in the chapters or articles of the Constitution may be opposed to the constitutional legal regulation established in the constituent parts of the Constitution. No amendment to the Constitution may create any such new constitutional regulation under which one provision of the Constitution would deny or contradict another provision of the Constitution and it would be impossible to interpret these provisions as in harmony one with another. Thus, the imperative stems from Paragraph 1 of Article 6 of the Constitution that no amendments to the Constitution may violate the harmony of the provisions of the Constitution or the harmony of the values consolidated in these provisions. Therefore, as long as the constitutional foundations of membership in the European Union, which are consolidated in Articles 1 and 2 of the Constitutional Act "On Membership of the Republic of Lithuania in the European Union", are not annulled by referendum, it is not permitted to make any such amendments to the Constitution that would deny the obligations of the Republic of Lithuania arising from its membership in the European Union. In the Constitutional Court's ruling of 11 July 2014, it is also held that the provision "Sovereignty shall belong to the Nation" of Article 2 of the Constitution, the provision "The Nation shall execute

its supreme sovereign power ... directly" of Article 4, as well as the provision "The most significant issues concerning the life of the State and the Nation shall be decided by referendum" of Article 9 of the Constitution, may not be interpreted only literally: these provisions do not mean that any legal regulation, including a legal regulation not complying with the requirements stemming from the Constitution, may be established, *inter alia*, in the Constitution itself, by the Nation by referendum.

5. Does the constitution in your jurisdiction provide for constitutional overview of the constitutional amendment? If yes, what legal subjects may apply to the constitutional court and challenge the constitutionality of the amendment to the basic law? What is the legally-prescribed procedure of adjudication in this regard?

5.Paragraph 1 of Article 102 of the Constitution stipulates that the Constitutional Court decides whether the laws and other acts of the Seimas are in conflict with the Constitution and whether the acts of the President of the Republic and the Government are in conflict with the Constitution or laws. Paragraphs 1 and 2 of Article 105 of the Constitution establish that the Constitutional Court considers and adopts decisions on whether the laws of the Republic of Lithuania or other acts adopted by the Seimas are in conflict with the Constitution of the Republic of Lithuania. The Constitutional Court also considers whether the following are in conflict with the Constitution and laws: the acts of the President of the Republic; and the acts of the Government of the Republic. Thus, the provisions of the Constitution determining the competence of the Constitutional Court to review the constitutionality of legal acts are very laconic: they do not specify in detail what particular laws or other legal acts may fall within the range of objects subject to constitutional review. In the Constitution, among the legal acts that are subject to the review of constitutionality, there is no *expressis verbis* mention of constitutional laws, laws adopted by referendum, laws adopted before the entry into force of the Constitution, the Statute of the Seimas, etc., or laws on amending the Constitution. However, the Constitutional Court has held that Article 102 of the Constitution may not be interpreted as providing a comprehensive and final list of legal acts the investigation into the compliance of which with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution, as well as the adoption of the related decisions, is assigned to the jurisdiction of the Constitutional Court under the Constitution.[149]

The Constitutional Court has also held that a literal (moreover, narrowing) interpretation of Paragraph 1 of Article 102 of the Constitution would be completely unreasonable, since it would

[149]The Constitutional Court's ruling of 28 March 2006. The Official Gazette *Valstybėsžinios,* 2006, No. 32-1292.

deny the principle of the supremacy of the Constitution, the constitutional principle of a state under the rule of law, the hierarchy of all legal acts as it stems from the Constitution, the provision of Paragraph 1 of Article 7 of the Constitution that any law or other act that contradicts the Constitution is invalid, the provision of Paragraph 2 of Article 5 of the Constitution that the scope of powers is limited by the Constitution, and the provision of Paragraph 1 of Article 6 of the Constitution that everyone may defend his/her rights by invoking the Constitution. If the said purely literal interpretation of Paragraph 1 of Article 102 of the Constitution were followed, the preconditions would also be created for violating other valuesconsolidated, defended, and protected by the Constitution, *inter alia,* the constitutional rights of a person.[150]

However, the Lithuanian scientific legal doctrine adopts the position that the laconism of Paragraph 1 of Article 102 and Paragraphs 1 and 2 of Article 105 of the Constitution actually expands the possibilities of constitutional review.[151] In the scientific literature, it is also maintained that the abstract term "acts" in Articles 102 and 105 of the Constitution is used deliberately, thereby creating the possibility for the Constitutional Court, where necessary, to assess the constitutionality of acts not directly named in the Constitution in cases where such an assessment leads to the solution of an obvious constitutional issue.[152]

In view of the laconic wording of the Constitution, the Constitutional Court on its part had to formulate the broad official constitutional doctrine specifying laws and other legal acts whose compliance with the Constitution may be investigated by the Constitutional Court. Thus, even though the Constitution does not contain explicit provisions directly indicating the powers of the Constitutional Court to assess the compliance of constitutional amendments with the Constitution, it is held in the jurisprudence of the Constitutional Court that the Constitutional Court has the powers to investigate the constitutionality of laws adopted by the Seimas on amending the Constitution.[153]In the light of the fact that the Constitutional Court has also held that it has the powers to investigate the constitutionality of laws adopted by referendum,[154] the conclusion should be drawn that the powers of the Constitutional Court include the review of the constitutionality of constitutional amendments adopted by referendum.

Although certain fragments of the doctrine on the constitutionality of constitutional amendments had already been formulated in the earlier jurisprudence of the Constitutional Court,

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[150]Ibid.
[151]KŪRIS, E. The Constitutional Court. In *Lietuvosteisinėsinstitucijos [Lithuanian Legal Institutions]*,p.83.
[152]ŠILEIKIS, E. *Alternatyvi konstitucinė teisė [Alternative Constitutional Law]*. Vilnius: VĮ Teisinės informacijos centras, 2003, p. 496.
[153]The Constitutional Court's ruling of 24 January 2014. The Register of Legal Acts, 01-24-2014, No. 478. In this ruling, the Constitutional Court recognised that the Law Amending Article 125 of the Constitution, in view of the procedure of its adoption, was in conflict with Paragraph 1 of Article 147 of the Constitution.
[154]The Constitutional Court's ruling of 28 March 2006. The Official Gazette *Valstybėsžinios,* 2006, No. 36-1292.

the essential development of this doctrine started in 2014. In this respect, two constitutional justice cases decided in 2014 should be mentioned. The first case is related to the constitutionality of the amendment to Article 125 of the Constitution and the constitutionality of the provisions of the Statute of the Seimas regulating the process of the alteration of the Constitution; the second case is related to the constitutionality of the provisions of the Law on Referendums. On 24 January 2014, the Constitutional Court adopted a ruling in which it, for the first time in the history of Lithuanian constitutional justice, recognised that an amendment to the Constitution (the Law Amending Article 125 of the Constitution) was unconstitutional in view of the procedure of its adoption. It should also be mentioned that Item 54.1 of the Rules of the Constitutional Court, as set out in a new wording and approved by the Constitutional Court's decision of 31 August 2015, provides that petitions requesting an investigation into the constitutionality of laws amending the Constitution may be filed with the Constitutional Court.

Under Paragraph 1 of Article 106 of the Constitution, the Government, not less than 1/5 of all the members of the Seimas, and courts have the right to apply to the Constitutional Court concerning the conformity of laws (i.e., including laws amending the Constitution) and other legal acts adopted by the Seimas with the Constitution. Under Paragraph 4 of Article 106 of the Constitution, a resolution of the Seimas on the application to the Constitutional Court for an investigation into the conformity of an act with the Constitution suspends the validity of that act. The Constitutional Court has noted that, based on the systemic interpretation of these provisions, it needs to be held that the Seimas *in corpore* has the constitutional powers, by adopting its resolution, to apply to the Constitutional Court and to request it to investigate the compliance of legal acts with the Constitution and laws.[155] Thus, the Seimas *in corpore* also has the right to apply to the Constitutional Court concerning laws amending the Constitution.

The Constitution and the Law on the Constitutional Court do not provide for an exceptional procedure for the verification of the constitutionality of laws amending the Constitution. Thus, cases concerning the constitutionality of amendments to the Constitution are considered under the same procedure as other constitutional justice cases concerning the compliance of legal acts with the Constitution or other higher-ranking legal acts. In this context, a specific reference can only be made of Item 103.1 of the Rules of the Constitutional Court, where it is prescribed that the consideration of cases concerning the constitutionality of laws amending the Constitution may normally be brought forward.

[155] *Inter alia,* the Constitutional Court's decision of 8 January 2008. The Official Gazette *Valstybėsžinios,* 2008, No. 5-173.

6. Is the constitutional court authorised to check constitutionality of the amendment to the basic law on substantive basis or is it only confined to review on procedural grounds? In the absence of explicit constitutional power, has the constitutional court ever assessed or interpreted constitutional amendment? What has been the rationale behind the constitutional court's reasoning? Has there been a precedent when the constitutional court had elaborated on its authority to exercise the power of judicial review of constitutional amendments either on substantive or procedural grounds? What is legal effect of a decision of the constitutional court finding the constitutional amendment in conflict with the constitution? Please, provide examples from the jurisprudence of the constitutional court.

6.As mentioned before, during the history of the activity of the Constitutional Court, it was only once that the Constitutional Court had to assess the constitutionality of an amendment to the Constitution. In its ruling adopted on 24 January 2014, the Constitutional Court declared that the Law Amending Article 125 of the Constitution, in view of the procedure of its adoption, was in conflict with Paragraph 1 of Article 147 of the Constitution. This constitutional justice case was initiated by the Seimas. The petitioner doubted as to whether, in the course of adopting the said law, the legislature had observed the requirement that a motion to alter or supplement the Constitution may be submitted to the Seimas by a group of not less than 1/4 of all the members of the Seimas, as stipulated in Paragraph 1 of Article 147 of the Constitution, since, in the course of the consideration of the said law, the Committee on Legal Affairs of the Seimas had substantially changed the content of the Draft Law Amending Article 125 of the Constitution, which had been submitted by a group of 45 members of the Seimas.

In giving one of the main reasons for declaring the amendment to Article 125 of the Constitution as unconstitutional, the Constitutional Court pointed out that, under Paragraph 1 of Article 147 of the Constitution, a motion to alter the Constitution may be submitted by a group of not less than 1/4 of all the members of the Seimas or not less than by 300,000 voters. The right to put forward a motion to the Seimas concerning the alteration of the Constitution is an exclusive one, i.e. only the aforementioned subjects have the right to submit to the Seimas a concrete draft amendment to the Constitution, i.e. a draft law amending the Constitution. Thus, under the Constitution, only those draft laws amending the Constitution that have been submitted by a group of not less than 1/4 of all the members of the Seimas or not less than 300,000 voters may be considered and voted upon by the Seimas. The Seimas may not consider and vote upon any such motion to alter or supplement the Constitution that would be proposed by subjects other than those specified in Paragraph 1 of Article 147 of the Constitution. In the ruling at issue, the Constitutional Court held that the circumstances of the adoption of the contested Law Amending Article 125 of the

Constitution made it clear that, in the course of the consideration of this constitutional amendment at the Seimas, the draft law that had been put to vote substantially differed from the draft law that had been submitted by the group of more than 1/4 of all the members of the Seimas. Such a substantially modified draft law was submitted to the Seimas by the Chair of the Committee on Legal Affairs upon the approval of this committee. In the light of this, the Constitutional Court recognised that the adoption of the Law Amending Article 125 of the Constitution violated Paragraph 1 of Article 147 of the Constitution.

While examining this constitutional justice case, the Constitutional Court identified the limitations both explicitly and implicitly consolidated in the Constitution with regard to the alteration of the Constitution. In its ruling of 24 January 2014, the Constitutional Court held that the concept, nature, and purpose of the Constitution, the stability of the Constitution as a constitutional value, and the imperative of the harmony of the provisions of the Constitution imply both substantive and procedural limitations on the alteration of the Constitution. The substantive limitations on the alteration of the Constitution are the limitations consolidated in the Constitution regarding the adoption of constitutional amendments of certain content; these limitations stem from the overall constitutional regulation; they are designed to safeguard the universal values upon which the Constitution is founded and to protect the harmony of these values and the harmony of the provisions of the Constitution. The procedural limitations on the alteration of the Constitution are related to the special procedure set for the alteration of the Constitution in Chapter XIV "The Alteration of the Constitution" of the Constitution. Thus, a failure to comply with either substantive or procedural limitations set on the alteration of the Constitution would constitute a ground for declaring a particular constitutional amendment as in conflict with the Constitution.

The **substantive** limitations identified in the jurisprudence of the Constitutional Court can be grouped into **absolute** limitations (which are designed to protect the fundamental constitutional values and entail the impossibility of constitutional amendments that deny such values) and **conditional** limitations (which imply that the Constitution can be amended upon the fulfilment of particular conditions that stem from the Constitution and ensure that the harmony of the provisions of the Constitution, as well as the harmony of values consolidated in these provisions, is not violated).

In its ruling of 11 July 2014, the Constitutional Court emphasised that the innate nature of human rights and freedoms, democracy, and the independence of the state are such constitutional values that constitute the foundation for the Constitution as a social contract, as well as the foundation for the Nation's common life, which is based on the Constitution, and the foundation for the State of Lithuania itself. No one may deny the provisions of the Constitution consolidating these fundamental constitutional values, since doing so would amount to the denial of the essence of the

Constitution itself. Therefore, even in cases where regard is paid to the limitations on the alteration of the Constitution that stem from the Constitution itself, it is not permitted to adopt any such amendments to the Constitution that would destroy the innate nature of human rights, democracy, or the independence of the state. If the Constitution were interpreted in a different way, it would be understood as creating the preconditions for abolishing the restored "independent State of Lithuania, founded on democratic principles", as proclaimed by the Act of Independence of 16 February 1918. Thus, these doctrinal provisions consolidate the absolute prohibition on making such amendments to the Constitution that would deny the innate nature of human rights, democracy, or the independence of the state, i.e. they form the doctrine of "eternal clauses".

In its ruling of 2014 January 24, the Constitutional Court also noted that the fundamental constitutional values consolidated in Article 1 of the Constitution – the independence of the state, democracy, and the republic – are closely interrelated with the geopolitical orientation of the State of Lithuania, which is consolidated in the Constitution and implies European and transatlantic integration pursued by the Republic of Lithuania. The geopolitical orientation of the State of Lithuania is expressed in the text of the Constitution both in the negative and positive aspects. The negative aspect of the geopolitical orientation of the State of Lithuania is expressed in the Constitutional Act "On the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions", and the positive aspect is expressed in the Constitutional Act "On Membership of the Republic of Lithuania in the European Union". These constitutional acts are a constituent part of the Constitution.

The Constitutional Act "On the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions" lays down the limits that may not be overstepped by the Republic of Lithuania in the processes of its participation in international integration and consolidates the prohibition on joining any new political, military, economic, or other unions or commonwealths of states formed on the basis of the former USSR. It is clear from the preamble to this constitutional act that it was adopted by invoking "the 16 February 1918 and 11 March 1990 Acts on the restoration of the Independent State of Lithuania, as well as the will of the entire Nation as expressed on 9 February 1991". Thus, the basis of the provisions of this constitutional act is the same fundamental principle of the state, which is grounded in the declaration of the sovereign will of the Nation and consolidated in Article 1 of the Constitutional Law "On the State of Lithuania": i.e., the State of Lithuania is an independent democratic republic. Therefore, the provisions of the aforesaid constitutional act should enjoy the same protection as the provision "The State of Lithuania shall be an independent democratic republic", which is stipulated in Article 1 of the Constitution and Article 1 of the Constitutional Law "On the State of Lithuania". Thus, under the Constitution, it is not permitted to make any such amendments to the Constitution that would deny the provisions of the

Constitutional Act "On the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions", with the exception of the cases where certain provisions of this constitutional act would be amended in the manner provided for in Article 2 of the Constitutional Law "On the State of Lithuania". This limitation on the alteration of the Constitution can be defined as *de facto* absolute: in practice, such an amendment is hardly possible (its adoption would require not less than 3/4 of votes of the citizens of Lithuania with active electoral right), although *de jure* there is such a theoretical possibility.

The Constitutional Act "On Membership of the Republic of Lithuania in the European Union" was adopted while exercising the will of the citizens of the Republic of Lithuania, as expressed in the referendum; thus, the full participation of the Republic of Lithuania, as a Member of the European Union, in the European Union is a constitutional imperative grounded in the expression of the sovereign will of the Nation. The constitutional grounds for the membership of the Republic of Lithuania in the European Union, without the establishment of which in the Constitution the Republic of Lithuania could not be a full Member of the European Union, and the expression of the sovereign will of the Nation, as the source of these grounds, determine the requirement that the provisions of Articles 1 and 2 of the Constitutional Act "On Membership of the Republic of Lithuania in the European Union" be altered or annulled only by referendum. Under the Constitution, as long as the said constitutional grounds for membership in the European Union, which are consolidated in Articles 1 and 2 of the Constitutional Act "On Membership of the Republic of Lithuania in the European Union", are not annulled by referendum, it is not permitted to make any such amendments to the Constitution that would deny the obligations of the Republic of Lithuania arising from its membership in the European Union. Thus, this limitation on the alteration of the Constitution can be considered conditional.

In its ruling of 24 January 2014, the Constitutional Court also identified two other substantive conditional limitations stemming from the Constitution with regard to the alteration of the Constitution. The first of them is related to the constitutional principle of respect for international law, i.e. the *pacta sunt servanda* principle, which means the imperative to fulfil, in good faith, the obligations assumed by the Republic of Lithuania under international law, *inter alia*,international treaties. Thus, under the Constitution, it is not permitted to make any such amendments to the Constitution that would deny the international obligations of the Republic of Lithuania and, at the same time, the constitutional principle of *pacta sunt servanda* as long as the said international obligations are not renounced in accordance with the norms of international law. The second of the aforesaid two substantive conditional limitations on the alteration of the Constitution implies that it is also not permitted to introduce any such amendments to the Constitution that, without correspondingly amending the provisions of Chapter I "The State of

Lithuania" and Chapter XIV "The Alteration of the Constitution" of the Constitution, would lay down a constitutional legal regulation contradicting the provisions of Chapters I and XIV of the Constitution.

While determining the procedural limitations on the alteration of the Constitution, the Constitutional Court pointed out that, under the Constitution, different procedures are established with regard to the alteration of constitutional law and ordinary law. The constitutionally established special procedure for amending the Constitution may not be equated to the legislation of laws *(inter alia*, constitutional laws). The constitutionally consolidated special procedure for amending the Constitution includes various special requirements (the prohibition on making amendments to the Constitution during a state of emergency or martial law; the possibility of amending certain provisions of the Constitution only by referendum; the particular subjects entitled to submit a motion to alter or supplement the Constitution; the requirement that amendments to the Constitution be considered and voted twice; the requirement that amendments to the Constitution be adopted by a special qualified majority vote of 2/3 of all the members of the Seimas, etc.).

The provisions of the official constitutional doctrine relevant to the constitutionality of constitutional amendments were further developed, and new doctrinal elements were formulated, in the Constitutional Court's ruling of 11 July 2014. In this ruling, it was held that the Constitution reflects the commitment of the national community – the civil Nation to create and strengthen the state in observance of the fundamental rules entrenched in the Constitution. The Constitution lays down the legal foundation for the common life of the Nation as the national community. Thus, it should be emphasised that the Constitution equally binds the national community – the civil Nation itself; therefore, the supreme sovereign power of the Nation may be executed, *inter alia*, directly (by referendum) only in observance of the Constitution.

It was also held in the said ruling that, since the Constitution equally binds the national community – the civil Nation itself, the requirement that the Constitution must be observed when the Nation, *inter alia*, directly (by referendum) executes its supreme sovereign power may not be regarded as a restriction or limitation, referred to in Article 3 of the Constitution, on the sovereignty of the Nation, or viewed as the taking over of the sovereign powers belonging to the entire Nation. It should be emphasised that the purpose of the provisions of Article 3 of the Constitution is to protect the constitutional values referred to in this article (the sovereignty of the Nation, the independence of the State of Lithuania, its territorial integrity, and the constitutional order); therefore, these provisions may not be invoked for the purpose of denying the said constitutional values. The provisions of Article 3 of the Constitution may not be interpreted, *inter alia*, in such a way that, purportedly, they imply the right of the Nation to disregard the Constitution, adopted by the Nation itself, or the right of any citizen or any group of citizens to equate themselves with the

Nation and act on behalf of the Nation while seeking to violate the aforementioned constitutional values.

The Constitutional Court also noted that the principle of the supremacy of the Constitution, *inter alia,* gives rise to the imperative according to which it is not permitted to put to a referendum any such possible decisions that do not comply with the requirements stemming from the Constitution. Thus, according to the Constitution, it is also not permitted to put to a referendum any such draft amendment to the Constitution that disregards the substantive limitations set on the alteration of the Constitution. Otherwise, the preconditions would be created for denying the principle of the supremacy of the Constitution and disregarding the imperative, stemming from Paragraph 1 of Article 6 of the Constitution, that no amendments to the Constitution may violate the harmony of the provisions of the Constitution and the harmony of the values consolidated in these provisions.

As mentioned before, in the ruling at issue, the Constitutional Court formulated the doctrine of "eternal clauses", i.e. the absolute prohibition on making any such amendments to the Constitution that would deny the innate nature of human rights and freedoms, democracy, or the independence of the state.

With regard to the legal effects of declaring a law amending the Constitution to be in conflict with the Constitution, first of all, it should be noted that, under Paragraph 1 of Article 107 of the Constitution, a law (or its part) or another act (or its part) of the Seimas, an act of the President of the Republic, or an act (or its part) of the Government may not be applied from the day of the official publication of the decision of the Constitutional Court that the act in question (or its part) is in conflict with the Constitution.

It is important to mention that, as it has been held in the jurisprudence of the Constitutional Court on more than one occasion, the nature of the Constitution as an act of supreme legal force and the idea of constitutionality imply that the Constitution may not have, nor does it have, any gaps.[156] Therefore, declaring a particular amendment to the Constitution as unconstitutional cannot mean the emergence of a legislative omission. It should also be noted that declaring a law amending the Constitution as unconstitutional may not create any preconditions for violating the provisions of the Constitution or the harmony of values consolidated in these provisions.

Thus, declaring amendments to the Constitution as unconstitutional may lead to different legal effects. In some cases, the recognition of unconstitutionality can mean the entry into force of the wording of a particular article of the Constitution that was in force before the entry into force of

[156]*Inter alia,* the Constitutional Court's ruling of 25 May 2004. The Official Gazette *Valstybėsžinios,* 2004, No. 85-3094.

the law amending the Constitution; however, such an option is not the best one in all cases. A relevant situation, which can serve as a good illustration of the cases at issue, occurred when, in its ruling of 24 January 2014, the Constitutional Court found the Law Amending Article 125 of the Constitution,[157] in view of the procedure of the adoption of this law, to be in conflict with Paragraph 1 of Article 147 of the Constitution. In the said ruling, the Constitutional Court held that, as from the day of the official publication of this ruling, the Law Amending Article 125 of the Constitution, *inter alia*, also Paragraph 2 of Article 125 of the Constitution, could not be applied. However, the Constitutional Court also emphasised that, in the light of the overall constitutional legal regulation, *inter alia*, the constitutional status of the Bank of Lithuania, the recognition of the Law Amending Article 125 of the Constitution to be in conflict with the Constitution did not mean that the wording of Article 125 of the Constitution that had been valid before the entry into force of the law in question would become effective again. In this respect, it is important to note that the constitutional amendment at issue was declared as unconstitutional only in terms of the procedure of its adoption; if the validity of the wording of Article 125 of the Constitution that had been valid before the entry into force of this amendment had been restored, this would have led to the inconsistency of the provisions of the Constitution: the provisions of the Constitution consolidating the exclusive right of the Bank of Lithuania to issue currency would have been incompatible with the provisions of the Constitution concerning membership of the Republic of Lithuania in the European Union, as well as with the constitutional imperative of full membership of Lithuania in the European Union.

7. Is there any tendency in your jurisdiction towards enhancing constitutional authority in respect of constitutional court's power to check amendments to the basic law? Do academic scholars or other societal groups advocate for such development? How the judicial review is observed in this regard? Would the expansion or recognition of constitutional court's authority encourage the realisation of constitutional ends or threaten its viability? Please, elaborate on existing discussion in your jurisdiction.

7.It has been mentioned that, although certain individual fragments of the official constitutional doctrine concerning the constitutionality of constitutional amendments had earlier been formulated in the jurisprudence of the Constitutional Court, in principle, the development of

[157]Before the entry into force of this law, Article 125 of the Constitution prescribed: "In the Republic of Lithuania, the Bank of Lithuania shall be the central bank, which belongs to the State of Lithuania by right of ownership. The Bank of Lithuania shall have the sole right to issue currency. The procedure for the organisation and activities of the Bank of Lithuania, as well as its powers, shall be established by law." Thus, Paragraph 2 of Article 125 (wording of 25 October 1992) of the Constitution provided for the exclusive powers of the Bank of Lithuania to issue currency; therefore, the amendment to Article 125 of the Constitution was necessary to create the legal preconditions for the adoption of the euro, the currency of the Economic and Monetary Union of the European Union.

this doctrine started in the above-discussed Constitutional Court's rulings of 24 January 2014 and 11 July 2014. In these rulings, the Constitutional Court revealed the substantive limitations on the alteration of the Constitution that are both explicitly and implicitly consolidated in the Constitution. Non-compliance with these limitations would constitute a ground for declaring a particular constitutional amendment as in conflict with the Constitution. As noted before, in the constitutions of states around the world, the possibility of the review of the constitutionality of constitutional amendments is rarely mentioned *expressis verbis*. Therefore, naturally, legal provisions concerning the constitutionality of constitutional amendments are revealed in the official constitutional doctrine formulated when the constitutional justice institutions decide various constitutional justice cases related to constitutional amendments. The Constitutional Court of the Republic of Lithuania is no exception; the powers of the Constitutional Court to review the constitutionality of constitutional amendments were similarly strengthened specifically by means of its jurisprudence.

The official constitutional doctrine on the constitutionality of constitutional amendments, as developed in the Constitutional Court's rulings of 24 January 2014 and 11 July 2014, has been favourably assessed in national scientific literature. In the works of Lithuanian constitutionalists, it is emphasised that the substantive limitations formulated in the Constitutional Court's ruling of 11 July 2014 have considerably enhanced the protection of the constitutionally consolidated fundamental values and, in particular, human right and freedoms.[158] The scholars also emphasise that, by testifying to the existence of not only explicit but also implicit legal regulation of constitutional amendments, various substantive and procedural limitations on the alteration of the Constitution, the particularities stemming from the integrity and harmony of the Constitution with regard to the alteration of constitutional provisions, interrelations among the substantive and procedural imperatives governing the alteration of the Constitution, internal and external factors determining the limitations on the alteration of the Constitution, inviolable fundamental constitutional values, etc., the official constitutional doctrine has laid the solid foundation for solving issues concerning constitutional alteration in the future.[159]

It needs to be mentioned that the Lithuanian legal scientific doctrine also gives the opinion that, "in its ruling of 11 July 2014, the Constitutional Court specified only some of the constitutional values that no one may deny by means of constitutional amendments, i.e. the innate nature of human rights and freedoms, democracy, and the independence of the state, as this list of values may not be interpreted as exhaustive (final)". It is maintained that the Constitution contains a

[158]SINKEVIČIUS, V. Konstitucijoskeitimoapribojimai [Limitations on the Alteration of the Constitution]. *Jurisprudencija*, 2015, No. 22(2), p. 224.
[159]BUTVILAVIČIUS, D. Konstitucijospataisųantikonstitucingumas [The Unconstitutionality of Amendments to a Constitution]. *Konstitucinėjurisprudencija*, 2014, No. 3(35), p. 216.

considerable number of other constitutional values that similarly may not be denied by means of constitutional amendments (e.g., the provision that justice is administered only by courts, the principles of the equality of the rights of all persons, the rule of law, the separation of powers, checks and balances, and other values).[160]

Thus, it can be stated that the Lithuanian legal scientific doctrine is in favour of the further development of the official constitutional doctrine on the constitutionality of constitutional amendments. Undoubtedly, the future will bring new and, possibly, even more complicated constitutional justice cases in which this doctrine will be elaborated and supplemented with new aspects, since the constitutionality of constitutional amendments is one of the most important and complicated issues of constitutionalism.

[160]SINKEVIČIUS, V. Konstitucijoskeitimoapribojimai [Limitations on the Alteration of the Constitution]. *Jurisprudencija,* 2015, 22(2), p. 224.