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## Questionnaire

## Reply by the Constitutional Court of Lithuania

## CONSTITUTIONAL JUSTICE AND SOCIAL INTEGRATION

The Constitution of the Republic of Lithuania does not refer *expressis verbis* to Lithuania as a social state, however, the principle of the social orientation of the state has been disclosed exhaustively in the Constitutional Court's doctrine. In the constitutional jurisprudence it has been held on more than one occasion that, under the Constitution, every citizen has the right to social security.[1] The Constitutional Court, when interpreting Article 52 of the Constitution, by which the grounds for the pensionary maintenance and social security are consolidated, has held on more than one occasion that these provisions express the social character of the state, whilst the social maintenance, i.e. the contribution by society to the support of those of its members who, due to the reasons provided for by law, are unable to support themselves from work or other means, or whose maintenance is insufficient, has the status of a constitutional value.[2] The Court emphasised that the state must create such a system of social maintenance that would enable one to maintain the living conditions in line with the dignity of a person, whilst, in case of need, it would render the necessary social assistance for the person.[3] In the Court's opinion, this is in line with both the modern concept of state functions and the constitutional tradition of the State of Lithuania in the 20th century.
Measures of social security express the idea of social solidarity; they help a person to protect himself or herself against possible social risks. Therefore, as it has been held in the constitutional jurisprudence, under the Constitution, the State of Lithuania is socially oriented and it is thus under a constitutional obligation to assume (and it must assume) the burden of the fulfilling of certain obligations.[4] The aspiration to help weaker members of society on the grounds of social justice helps secure not only social harmony, but also the social dignity of each human being.

### 1. Challenges of social integration in a globalised world

*1.1. What challenges has your Court encountered in the past, for example in the field of asylum law, taxation law or social security law?*
The Constitutional Court's jurisprudence has interpreted, in a widest and most exhaustive manner, the right of a person to social security. It is possible to state that it is this sphere that has seen the deciding of the largest number of constitutional justice cases, thus, namely in

[1] *Inter alia, the* Constitutional Court's rulings of 25 November 2002, 5 March 2004, 14 December 2010, 16 May 2013, etc.
[2] *Inter alia,* the Constitutional Court's rulings of 19 April 2008, 2 September 2009, and 14 December 2010.
[3] *Inter alia,* the Constitutional Court's ruling of 26 September 2007, its decision of 20 April 2010, and its ruling of 6 February 2012.
[4] The Constitutional Court's ruling of 5 March 2004, its decision of 20 April 2010, its rulings of 29 June 2010 and 6 February 2012.

this area there have arisen most of the problems of the legal regulation. One should mention various aspects of social security that have been analysed in constitutional justice cases: social insurance payments due to occupational diseases, social benefits, old-age pensions as well as pensions of other types, compensation for health injury sustained at work, etc.

Perhaps, the most common issue in the constitutional justice cases was an aspiration to defend the right to an old-age pension. In its rulings, the Constitutional Court has recognised on more than one occasion the existence of the protection of the right of a person to receive the payment of an awarded pension that has been established by means of a law that is not in conflict with the Constitution.[5] In its doctrine, the Constitutional Court has also related this right to the protection of the rights of ownership of persons. In its rulings, the Constitutional Court has held on more than one occasion that the constitutional right of a person to receive a pension is one of the most important social rights of persons.[6] A part of such considered cases dealt with the payment of old-age and disability pensions, which are the types of pensions specified *expressis verbis* in Article 52 of the Constitution. However, a big part of cases were related to other types of pensions (state pensions of judges, officials, servicemen, etc.) that are not explicitly pointed out in Article 52 of the Constitution but are established by law. The Constitutional Court, while developing the official constitutional doctrine of the right to a pension, held that, after the types of pensions, the persons entitled to the pension, the grounds and conditions of the granting and paying of pensions, and their amounts, have been established by law, a duty arises for the state to follow the constitutional principles of the protection of legitimate expectations and legal certainty in the area of pensionary maintenance relations; the persons have the right to reasonably expect that their rights acquired under the valid laws or other legal acts that are not in conflict with the Constitution will be retained for the established period of time and could actually be implemented.

The Constitutional Court has also interpreted, on more than one occasion, the right to freely choose an occupation and business, the right to receive fair pay for work, the right to proper, safe and healthy conditions at work, the right to health care, the right of the families raising children of less than 14 years old to receive social assistance, the right to a maternity (paternity) benefit during maternity (paternity) leave and other issues ascribed to social rights.

In the Constitutional Court's doctrine, the social rights are also interpreted as certain state obligations to society that are, *inter alia,* determined by the social purpose of the state,[7] and as persons' individual rights, are under guaranteed judicial protection.

Perhaps, the biggest challenge faced by the Constitutional Court in the course of the investigation of the constitutional justice cases regarding social security both in the past and at present is the diminishing of the guarantees of social maintenance and the limitation of other social rights upon the emergence of an especially difficult economic and financial situation in the state. During its activities, the Constitutional Court of Lithuania has faced this challenge on more than one occasion: the first group of such cases received at the Constitutional Court due to the regional Russian crisis that took place in 1999–2000 were decided in 2002–2006, whereas the second group of such cases were received due to the global economic crisis and they have been considered by the Constitutional Court since 2009. According to the constitutional doctrine, the compensation of the reduced social guarantees for certain social groups must be established by the legislature in order to compensate the losses sustained by those groups due to the reduction of the social

[5] E.g., the Constitutional Court's rulings of 4 July 2003, 13 December 2004, 2 September 2009, 6 February 2012, etc.

[6] *Inter alia,* the Constitutional Court's ruling of 22 October 2007.

[7] For more about the social purpose of the state, see the answers to the questions of the third chapter.

payments and guarantees, whilst such compensation has become a significant challenge both to the Constitutional Court and the legislature *(For more about the official constitutional doctrine on the reduction of social guarantees, see the answer to question 1.3 regarding the prevailing issues of social security both in the past and at present).*

*1.2. How were issues of social integration or conflict transformed into legal issues?*

The Constitution of the Republic of Lithuania consolidates a rather wide catalogue of social rights. The constitutional consolidation of a wide range of social rights serves as the grounds for the state duties in the sphere of social policy.[8] The social orientation of the state is reflected in various provisions of the Constitution which consolidate economic, social and cultural, as well as civil and political rights of a human being, the relations between the society and the state, the bases of social assistance and social security, the principles of the organisation and regulation of the national economy, the bases of the organisation and activity of state institutions, etc.[9] The Constitutional Court has held on more than one occasion that a socially oriented state is under a constitutional obligation to assume (and it must assume) the burden of the fulfilling of certain obligations. The provisions of the Constitution guaranteeing the right to social maintenance obligate the state to establish sufficient measures of the implementation of the right in question and its judicial defence.

Thus, the Constitution itself has consolidated both certain expectations of citizens related to social security and the social assistance guaranteed by the state and the respective state obligations to secure the social rights guaranteed by the Constitution. When respective state institutions fail to take necessary actions so that the state would implement the imperatives dictated by the Constitution in the sphere of social security, or, in case in the course of the implementation of the social rights guaranteed by the Constitution there are deviations from the principles and provisions entrenched in the Constitution, there occur social conflicts which have to be solved by the Constitutional Court after the corresponding subjects have filed corresponding applications. In some situations social conflicts also arise when the legislature, when implementing the social rights of persons, by means of the legal regulation adopted by it creates groundless expectations for them and assumes overly large obligations which the state is unable to fulfil later (e.g., the establishment of unreasonably big social payments, the choice of a targeted group that is unreasonably big, etc.).

In the course of the consideration of the cases related to the constitutional social rights of persons, the constitutional jurisprudence has faced on more than one occasion the inactive legislature and the legal gaps that create really big difficulties for the implementation of social rights and sometimes lead to a new social conflict that could arise from the slow actions of corresponding state institutions in the execution of the Constitutional Court's decisions defending certain social rights of persons. In such cases the Constitutional Court noted that the legislative omission[10] must be removed by courts in every concrete individual case, however, such court decisions do not cancel the legislature's obligation to fill the legal gap by adopting the required legal act.[11] Such a position of the Constitutional Court is especially significant in the deciding of the cases on a person's social rights whose either

[8] Lapinskas K. Asmens socialinių teisių apsaugos klausimai Republic of Lithuania Constitutional Court jurisprudencijoje [The Issues of the Protection of the Social Rights of Persons in the Jurisprudence of the Constitutional Court of the Republic of Lithuania]. *In: Asmens socialinės teisės konstitucinių teismų jurisprudencijoje*. The material of the conference of justices of the Constitutional Court of the Republic of Lithuania and the Constitutional Court of the Republic of Latvia. Vilnius, 2007.
[9] The Constitutional Court's rulings of 5 March 2004 and 6 February 2012.
[10] The legal gap that is prohibited by the Constitution.
[11] The Constitutional Court's decision of 8 August 2006.

implementation or restoration would be impossible if the legislature eluded its responsibility to regulate the respective relations by means of ordinary law.[12]

*1.3. Is there a trend towards an increase in cases on legal issues relating to social integration? If so, what were the dominant questions before your Court in the past and what are they at present?*

The Constitutional Court's rulings passed in the deciding of the constitutional justice cases regarding the issues of violations of persons' social rights constitute round about 12 percent of all final acts[13] in which cases were decided in substance. It should be noted that almost half of all Constitutional Court rulings in the sphere of the protection of social rights have been passed during the last two years: in 2012, six rulings of such kind were passed and they comprised 37.5 percent of all the rulings passed that year, whilst in 2013 the Constitutional Court passed 10 rulings in the sphere of social rights and they comprised 43.5 percent of all the ruling passed that year. Thus, the number of the cases on social issues has recently not been decreasing, but, rather, on the contrary, the social sphere is the one regarding which the Constitutional Court adopts most of its rulings. This was determined by the aforementioned global economic crisis of 2009 whose consequences were felt all over the world. Namely in 2012–2013 the Constitutional Court considered the petitions of petitioners, which had been received in 2009–2010, regarding the reduction of social guarantees and social payments.

As regards all constitutional justice cases on social issues, it should be noted that, as mentioned before, the Constitutional Court's rulings passed regarding the issues of the social sphere most often decided the questions related to the securing of the right to an old-age pension accumulated in social insurance funds, state funds and private pension funds: they comprise round about 34 percent of all cases on social issues at the Constitutional Court by means of which the petitions of 82 petitioners were solved. The constitutional justice cases in which the Constitutional Court considered the issues related to social insurance payments and contributions are almost equal in number—the rulings passed in this sphere comprise round about 29 percent of all cases on social issues that were settled at the Constitutional Court. In the latter cases 25 petitions of the petitioners were decided.

The main subjects initiating the constitutional justice cases attempting to defend violated social rights are courts of general jurisdiction and administrative courts subsequent to the petitions of which 30 rulings of the Constitutional Court have been adopted. Part of the cases were initiated by groups of members of the Seimas (Parliament); the petitions submitted by the groups of members of the Seimas sought the elucidation regarding the reduction of paternity benefits, the duty to pay state social insurance contributions and compulsory health insurance contributions, and regarding the legal acts through which the state budget is approved.

On the grounds of an analysis of the official constitutional doctrine formulated by the Constitutional Court it is possible to distinguish certain stages of the development of this doctrine. At the beginning of the activity of the Constitutional Court the contents of those rights, their peculiarities, the extent of state duties in the guaranteeing of those rights were consolidated and interpreted and the conception of the indivisibility and reciprocity of all human rights and freedoms was gradually entrenched.[14] It has been mentioned that namely the constitutional right of persons to a pension and the guarantees of the ensuring of this

[12] Kūris E. Konstitucija kaip teisė be spragų [The Constitution as Law Without Gaps]. *Jurisprudencija*, 2006, No. 12 (90).

[13] From the total number of 314 rulings adopted until 1 January 2014, 38 of such rulings were about social security issues.

[14] Cf. Birmontienė T. Ekonomikos krizės įtaka konstitucinei socialinių teisių doktrinai [The Influence of Economic Crisis on the Constitutional Doctrine of Social Rights]. *Jurisprudencija*, 2012, No. 19 (3).

right were most often interpreted. The Constitutional Court decided, on more than one occasion, on the constitutionality of the legal acts that had diminished the guarantees of certain constitutional social rights that yet had not been determined by the consequences of the economic crisis by then. Later, the Constitutional Court had to give an answer to and elucidate more concrete aspects of the protection of social rights.

As mentioned before, one of the biggest difficulties faced not only by the Constitutional Court, but also by all state institutions within their competence, was the global economic crisis and its consequences for the economy of the State of Lithuania, which determined the subsequent increase in the number of cases on social issues at the Constitutional Court. In this context it should be noted that the doctrine of the limitation of social rights under conditions of an economic crisis was formed in two stages in the jurisprudence of the Constitutional Court: in 2002–2006, when the Constitutional Court was deciding on the legal acts that had diminished social guarantees, which had been determined by the consequences of the so-called Russian economic crisis for the economy of the State of Lithuania, and since 2009 until the present, where the Constitutional Court has been forming the constitutional doctrine of limitation of social rights that has been determined by the consequences of the global economic crisis for the economy of the State of Lithuania.

Namely as regards the earlier economic crisis, the Constitutional Court held for the first time that the amendments to the established legal regulation deteriorating the pensionary maintenance are allowed, however, only when there occurs an extraordinary situation in the state and when this is necessary for the protection of other constitutional values; such amendments could be done only by law and only without violating the Constitution.[15] The diminished old-age pensions could be paid only on a temporary basis, as long as there is the extraordinary situation in the state, without violating a balance between the interests of a person and those of society, and in keeping with the other imperatives consolidated in the Constitution.[16]

The doctrine of limitation of social rights encompassing the reduction of not only pensions, but also other social payments as well as remuneration, was developed in subsequent Constitutional Court rulings in the face of the 2009 economic crisis that had spread all over the world, after the legislature, when reacting to that crisis, had drastically reduced the expenditure of the budget of the State of Lithuania, *inter alia,* the expenditure meant for social payments, also after it had reduced the funding of the state authority institutions from the state budget, thus, including the remuneration of the employees of this sector and of judges. Due to the economic crisis an issue was raised regarding the reduction of the remuneration of members of Parliament, too.

The Constitutional Court's decision of 20 April 2010,[17] having summarised and further developing the doctrine of the diminishing of social guarantees under conditions of an economic and financial crisis, formulated some general principles that must be heeded in case such a situation occurs in the state. Decisions on the reduction of social guarantees may be adopted only if the following conditions are followed: the reduction is established for the period of no longer than one year—when the budget of the subsequent year is being confirmed, a new assessment of the economic situation in the state must be made and a new decision on the possible reduction must be taken; the legislature, when adopting the respective legal acts that diminish social guarantees, must pay heed to the constitutional imperatives of a state under the rule of law, the equality of rights, justice, proportionality, the protection of legitimate expectations, legal certainty, legal security, social solidarity, as well as other imperatives; any reduction of social guarantees is allowed only after an official

[15] The Constitutional Court's ruling of 23 April 2002.
[16] The Constitutional Court's ruling of 25 November 2002.
[17] Précis of the ruling in the CODICES database: LTU-2010-2-005.

statement that there has occurred such an especially difficult economic and financial situation, which is not short-termed, due to which the state is unable to continue the fulfilment of the obligations undertaken by it; the old-age pensions reduced due to an economic crisis must be compensated. It was emphasised in the Constitutional Court's rulings that the correction of pensions and other payments during the period of an economic crisis may not be treated as a reform of such social guarantees.

As an example of the forming of the social rights' limitation doctrine one might also mention the Constitutional Court's ruling of 6 February 2012,[18] which, among other things, subsequent to the petitions received from 39 courts, assessed the legal regulation that had reduced various social payments due to the especially difficult economic situation (namely, due to the 2009 economic crisis) and decided on whether the legislature had properly followed the criteria formulated in the constitutional jurisprudence. The Constitutional Court, in its decision on the reduction of old-age pensions, reiterated its statement that such reduction is allowed only if the requirements stemming from the Constitution and interpreted in the Constitutional Court's doctrine are followed: under the Constitution, upon occurrence of an extreme situation in the state, when, *inter alia,* due to a very difficult economic and financial situation it is impossible to accumulate the amount of funds necessary to pay old-age pensions, the legal regulation of pensionary relations may be amended, *inter alia,* by reducing the awarded and paid old-age pensions, however, while doing so, the legislature must heed, *inter alia,* the constitutional principles of the equality of rights and proportionality, and establish an equal and non-discriminatory scale of the reduction of pensions; the reduced pensions may be paid only temporarily after a mechanism of compensation for incurred losses is provided for. The same ruling, among other things, also held that such reduction of the old-age pensions with respect to the persons who had a certain job or conducted a certain business and who were covered by state social pension insurance on a compulsory basis, where the reduction of the old-age pensions with regard to the same persons had been carried out to a greater extent solely on the grounds that those persons had a certain job or conducted a certain business if compared to the reduction of the old-age pensions regarding the persons who did not have any job and did not conduct any business, was not allowed.

The Constitutional Court's ruling of 29 June 2012[19] decided on the compliance of the legal regulation that had reduced the amount of the contribution transferred to pensions' funds due to the economic crisis, with the Constitution. According to the petitioners, such legal regulation had violated, *inter alia,* the legitimate expectations of persons to accumulate their old-age pensions by investing a certain part of the contribution in private pension funds. In its ruling, the Constitutional Court emphasised that the amount of the funds, which are transferred to pension funds and which are designated for accumulation of an old-age pension (or part thereof), is one of the preconditions to achieve good results of the investment, therefore, if the legislature, in case there occurs an economic crisis, decides to reduce this amount, it not only may not deny the essence of the cumulative pension, but also must seek to achieve the situation where the persons that have accumulated this pension would not sustain big losses, whereas in case such losses are unavoidable, the legislature must, while taking into account also the financial and economic possibilities of the state, establish just compensation for such losses. The legislature, upon occurrence of an especially difficult economic and financial situation in the state due to special circumstances (an economic crisis etc.), in case it decides to reorganise the system of old-age pensions in essence, *inter alia,* in a way where the funds designated for the old-age pension or a part thereof would no longer be accumulated in special pension funds, must seek to achieve a situation where the participants of the pension system would not sustain losses, whilst in

[18] Précis of the ruling in the CODICES database: LTU-2012-1-004.
[19] Précis of the ruling in the CODICES database: to be included shortly.

case the losses sustained by its participants, especially when such losses are essential, were unavoidable, the legislature should establish just compensation for those loses.

In one of its most recent cases, which sent ripples through the public and through circles of politicians, the Constitutional Court decided the issue of the reduction of the remuneration of state servants and judges, on account of an especially difficult economic situation in the state. On 1 July 2013, in this case the Constitutional Court passed the ruling[20] stating that the reduction of the base amount of the positional salary (remuneration) had been carried out in view of the deteriorating economic and financial situation in the state, when the funds for financing the needs provided for in the state budget law used to be not collected, therefore, the legal regulation that had established the said reduction was not in conflict with the Constitution. However, the Constitutional Court recognised that the legal regulation that had established larger reduction with regard to the state servants, politicians and judges, who had been earning bigger wages, than with respect to all the rest members of those groups, and that had established the reduction without taking into account the proportions of the remuneration that used to be prior to the crisis (i.e. that legal regulation had established the reduction not based on any systemic grounds) as being in conflict with the Constitution. The legal regulation that had established the reduction of the coefficients of the positional salaries of only the state servants of higher positional categories (whereas the remuneration of the state servants holding the highest positions had even been reduced twice), as well as the legal regulation that had established reduced amounts of the additional pay of the remuneration of state servants for their qualification class, was not in line with the Constitution. The Court held that such legal regulation had reduced the remuneration of states servants in a disproportionate manner, *inter alia,* the proportions (i.e., the proportions that had been established in the period prior to the occurrence of the particularly difficult economic and financial situation in the state) of the amounts of the remuneration of the persons holding different positions had been violated and the amount of the remuneration of state servants with high qualification, who performed complex work, had been approximated or even equalised to the remuneration of persons with lower qualification. Thus, the Constitutional Court confirmed that, in general, the reduction of the remuneration of state servants, officials, and judges is allowed in case there is an especially difficult economic and financial situation in the state, however, the reduction must be proportionate and same for all.

It should be noted that a certain period of time was necessary for the legislature so that the said ruling of the Constitutional Court could be implemented, i.e. so that the state financial resources would respectively be redistributed and the legal regulation governing the state budget allocations for the work remuneration of the persons who are paid for their work with the funds of the state budget or municipal budget would be amended, and/or the amendments to laws would be made with the purpose of the establishing of the extent of the reduction of the remuneration of the persons who are paid for their work with the funds of the state budget or municipal budget that would not distort the remuneration's amounts' proportions that had been established in the period prior to the occurrence of the particularly difficult economic and financial situation in the state, therefore, due to this, the official publication of the ruling was postponed for half a year. However, even such a period of time was not sufficient for the legislature for the proper preparation of the execution of that ruling. The unconstitutional legal regulation was amended on 1 January 2014, therefore, it is possible to state that at present the ruling has been executed.

This ruling is also interesting in the aspect that, having held that the provisions of the laws that had established the disproportionate extent of the remuneration of the persons who are paid for their work with the funds of the state budget or municipal budget, were in conflict with the Constitution, the Constitutional Court consolidated in its ruling for the first time the

[20] Précis of the ruling in the CODICES database: to be included shortly.

duty of the legislature to establish a mechanism of the compensation for the sustained losses, i.e., a procedure by which such losses, insofar as they had been disproportionate, would be compensated, within a reasonable time and in a fair manner, by the state. The same ruling also noted that such legal regulation should be established without any unreasonable delay in order to avoid numerous applications to courts lodged by the persons who are paid for their work with the funds of the state budget or municipal budget requesting that the courts award them the remuneration's unpaid part that came into being after the legal provisions, which had been recognised by this Constitutional Court's ruling as conflicting with the Constitution, had reduced the coefficients of the positional salaries (remuneration) or the amounts of the additional pay for the qualification class or for qualification category. Until then, in the constitutional justice cases on social security issues, which had dealt with the reduction of social payments, a duty to establish a mechanism of the sustained losses used to be a necessary condition for any lawful reduction of corresponding payments (e.g., reduction of old-age pensions, of other social payments, restructuring of the pension system, etc., due to an economic crisis), however, having held that the reduction of certain payments was unlawful, the Constitutional Court used not to seek the regulation of the consequences of the losses caused by the unconstitutional legal act.

*To summarise the social integration challenges faced by the Constitutional Court of the Republic of Lithuania, it should be noted that the cases in which the issues on the reduction of social guarantees and other social payments and on the compensation for the losses sustained due to such reduction was the biggest challenge in the constitutional justice jurisprudence. During the last two years the number of cases on social issues has increased considerably at the Constitutional Court when it considered the petitions received at the Court at the peak of the global economic crisis.*

## 2. International standards for social integration

*2.1. What are the international influences on the Constitution regarding issues of social integration/social issues? Does your Court apply specific provisions on social integration that have an international source or background? Does your Court directly apply international instruments in the field of social integration? Does your Court implicitly take account of international instruments or expressly refer to them in the application of constitutional law?*

Even though every state establishes concrete measures by which social human rights are implemented, *inter alia,* the right to social security, it must follow the requirements undertaken within the provisions of international law. The social rights, being an object of regulation of international law, form the European doctrine of those guarantees and exerts influence on the concept of those rights in the national law.[21]

As well as other state institutions, the Constitutional Court must respect the obligations on social integration that are consolidated in international law and are undertaken by means of international treaties. Paragraph 3 of Article 138 of the Constitution provides that "[i]nternational treaties ratified by the Seimas of the Republic of Lithuania shall be a constituent part of the legal system of the Republic of Lithuania". The provisions of the Constitution, *inter alia,* Articles 135 and 138 thereof, consolidate the principle of respect for international law (the following of the universally recognised principles and norms of international law) and the contribution to the creation of the international order based on law and justice. The Constitutional Court, while interpreting the provisions of the Constitution related to the obligations undertaken by the state, *inter alia,* the obligations to respect the norms of international law, has held that the State of Lithuania, when recognising the

[21] Birmontienė T. Ekonomikos krizės įtaka konstitucinei socialinių teisių doktrinai [The Influence of Economic Crisis on the Constitutional Doctrine of Social Rights]. *Jurisprudencija,* 2012, No. 19 (3).

principles and norms of international norms, may not apply virtually different standards to its own people; holding that it is a member of the international community possessing equal rights, the State of Lithuania, of its own free will, adopts and recognises these principles and norms, the customs of the international community, and naturally integrates itself into the world culture and becomes its natural part.[22] The observance of international obligations undertaken of its own free will and the respect of the universally recognised principles of international law (as well as the principle *pacta sunt servanda)* are a legal tradition and a constitutional principle of the restored independent State of Lithuania.[23] Thus, under the Constitution, the standards of social integration on a level that is lower than the one established at the international level cannot be established in Lithuania.

It should be noted that in the course of the deciding of constitutional justice cases the sources of international law in which the standards of social integration are consolidated are used in a several-fold manner: some rulings of the Constitutional Court cite the provisions of international law acts directly in order to show that the sphere under consideration is regulated not only by the Constitution, but also by international documents (i.e. the international context is disclosed); in some other cases they play an orientational role: they are considered and invoked in order to interpret certain constitutional provisions (i.e. the constitutional provisions are construed in the context of the provisions of an international treaty); in some other rulings of the Constitutional Court direct references are made to sources of international law; in still other rulings references to sources of international law are indirect—even though there are no direct references to such sources, their influence on the decisions of the Constitutional Court is implicit, however, of no less importance.

The Constitutional Court's rulings invoke not only the provisions of international acts but also the jurisprudence of the international courts that interpret those provisions. The role of the latter in the Constitutional Court's acts is most often a supplementary or orientational one and discloses the international aspect of the considered issue (for example, when the aspect of the protection of the right of ownership (the awarding and paying of social payments) is considered in the constitutional justice cases, the ECtHR jurisprudence is often referred to); in other cases the jurisprudence of international courts is used in order to strengthen the position formulated by the Constitutional Court (for example, the constitutional justice case on the concept of family, the ruling regarding which was adopted on 28 September 2011); in other cases the role of the international jurisprudence may be a harmonising one—one takes account of such jurisprudence and it is invoked in those constitutional justice cases in which the official constitutional doctrine has not been formulated yet, therefore, one seeks inspiration in decisions of international courts and the standards of the protection of human rights as formulated by those courts are absorbed. Having familiarised with examples of the jurisprudence of international courts on a concrete issue, the Constitutional Court interprets and applies the provisions of the Constitution, thus, the jurisprudence of supranational courts is only used as a source of inspiration.

Regarding the deciding of constitutional justice cases in the sphere of social security and the formulating of the official constitutional doctrine, the European Convention on Human Rights (hereinafter also referred to as the ECHR) and the interpretation of its provisions as disclosed in the jurisprudence of the European Court of Human Rights (hereinafter also referred to as the ECtHR) have been very influential. In the jurisprudence of the Constitutional Court it has been held that "the Convention for the Protection of Human Rights and Fundamental Freedoms is a special source of international law". It has also been held on more than one occasion that "the jurisprudence of the European Court of Human Rights, as a source of construction of law, is also important for the construction and application of Lithuanian law". The Constitutional Court's rulings and other final acts have also invoked on

[22] The Constitutional Court's ruling of 9 December 1998.
[23] The Constitutional Court's ruling of 14 March 2006.

more than one occasion the provisions of the European Social Charter (revised), the International Labour Organisation Conventions, and other international instruments.

As it has been mentioned in this report on more than one occasion, one of the issues raised most often in constitutional justice cases is the right to pensionary maintenance and various limitations related to this right. While deciding cases of such kind, the Constitutional Court has looked for an inspiration in international sources and the jurisprudence of international courts on more than one occasion. For instance, the constitutional justice case in which the Constitutional Court's ruling of 4 July 2003[24] was adopted decided various issues related to the awarding and paying of state pensions of officials and servicemen. The state pension of officials and servicemen is not directly provided for in the Constitution, however, under the discretion of the legislature, is awarded to the persons who have served in the armed forces for some time or to those who have held corresponding positions. In that case the petitioners impugned the legal regulation to the effect that, in case there were certain conditions, the payment of the state pension of officials and servicemen that had been awarded and paid could be discontinued or the pension itself could be reduced. The Constitutional Court noted that, under the Constitution, the persons who had been granted and paid the state pensions of officials and servicemen had the right to demand that the payments be further paid in the amounts which had been granted and paid before, and that such a social payment had to be protected as ownership of those persons. The awarded and paid pensions may be reduced, in the course of a reform of pensions some pensions may disappear, whereas the amounts of some pensions may become reduced, however, in all cases the legislature must establish a mechanism of fair compensation for the losses sustained by the persons due to such changes in the regulation. In that constitutional justice case, the Constitutional Court also referred, among other things, to Article 1 of the First Protocol to the ECHR that defends the right of persons to ownership and illustrated the rationality of its position, *inter alia,* with several examples from the ECtHR jurisprudence: in the ruling it was emphasised that, according to the ECtHR jurisprudence, the defence of the right of property is applied not only to the objects of the right of ownership which are *expressis verbis* specified by civil laws of states, but also to economic interests, as specified in the judgment in the case *Tre Traktörer Aktiebolag v. Sweden* of 7 July 1989, to the rights of claim of property nature as pointed out in the ECtHR judgment in the case *Pressos Compania Naviera SA and others v. Belgium* of 20 November 1995, to the right to the pension that resulted from work as specified in the ECtHR judgment in the case *Gaygusuz v. Austria* of 16 September 1996, and to the right to the old-age pension, as seen in the ECtHR judgment in the case *Wessels-Bergervoet v. Netherlands* of 4 June 2002. The ECtHR doctrine was referred to in the course of the interpretation that property or possessions which belong to a person are defended as well as legal demands (claims) on the basis of which the claimant may argue that he has at least "a legitimate expectation" to dispose of the property. Alongside, it was mentioned that neither the provisions of the Convention nor the ECtHR jurisprudence deny the possibility of reorganisation of pensionary maintenance and social security: according to the ECtHR, the state, while regulating social policy, is in possession of sufficiently broad opportunities to change amounts of pensions, however, it is necessary to observe certain requirements while amending legal regulation of this field: the applied means must be in conformity to the objective sought and the interference by the state must ensure the balance between the general interest of society and the requirement for protecting the fundamental rights of the person. This was held with reference, *inter alia,* to the ECtHR admissibility decision in *Jankovic v. Croatia* of 12 October 2000, the judgment in the case *Sporrong and Lönnroth v. Sweden* of 23 September 1982 and other the ECtHR judgments in this sphere. Similar problematic issues have been considered in a great many rulings of the Constitutional Court in which the ECtHR experience was broadly referred to.

From among the constitutional justice cases on social security issues that referred to the international instruments other than the ECHR, it is possible to mention the Constitutional

[24] Précis of the ruling in the CODICES database: to be included shortly.

Court's ruling of 5 March 2004 on the procedure for awarding and paying social benefits in which the Constitutional Court referred to Principles 1, 2 and 3 of Recommendation No. R(2000)3 of the Committee of Ministers of the Council of Europe "On the Right to the Satisfaction of Basic Material Needs of Persons in Situations of Extreme Hardship" of 19 January 2000, Paragraph 1 of Article 13 and Article 16 of the European Social Charter (revised), and European (Communities) Council Recommendation 92/441/EEC "On common criteria concerning sufficient resources and social assistance in social protection system" of 24 June 1992. The Constitutional Court's ruling of 2 September 2009 on disability pension (pension for lost capacity to work) referred to Articles 137, 42 of the Treaty Establishing the European Community, Paragraph 1 of Article 4 of Council Regulation (EEC) No. 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, Paragraph 1 of Article 3 of Regulation (EC) No. 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, three judgments of the Court of Justice of the European Union (hereinafter referred to as the CJEU), Items 11, 13, 3 of Part I, Items 1, 3 of Article 11 and Article 12 of Part II of the European Social Charter (revised), Paragraph 1 of Article 25 and Article 22 of the United Nations Universal Declaration of Human Rights (1948), Paragraph 1 and Paragraph 2d of Article 12 and Article 9 of the United Nations International Covenant on Economic, Social and Cultural Rights (1966). In its ruling of 27 February 2012 on awarding maternity, paternity, maternity (paternity) benefits and limitation upon payment thereof, the Constitutional Court referred to Paragraph 1a of Article 153 of the Treaty on the Functioning of the European Union, Paragraphs 1 and 2 of Article 8 and Items 2, 3, and 4 of Article 11 of Directive of the Council of the European Communities 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC), two judgments of the CJEU, as well as Items 8 and 16 of Part I of the European Social Charter (revised).

*2.5. Has your Court ever encountered conflicts between the standards applicable on the national and on the international level? If so, how were these conflicts solved?*

There have been no such cases in the practice of the Constitutional Court. As mentioned before, it follows from the provisions of the Constitution that, in Lithuania, one is allowed to establish the standards of social integration that are only on a higher level than the level on which the standards of social integration are established in international obligations.[25]

*To summarise the influence of international standards of social integration on Lithuania's constitutional jurisprudence, it should be noted that, when it decides constitutional justice cases, the Constitutional Court takes into account and follows the obligations in the sphere of social security undertaken by means of international treaties; the role of such treaties in the formulating of the constitutional doctrine is a significant one. In the Constitutional Court's rulings, the sources of international law are most often applied indirectly, by means of such sources the international context of the considered case is illustrated, they are used in an attempt to strengthen the position chosen by the Constitutional Court, by means of such sources one seeks inspiration in the spheres where no official constitutional doctrine has been formulated yet. The influence of international sources and international jurisprudence is undoubtedly felt in the cases containing no direct references to, or citations from, the international documents or decisions of international courts.*

[25] It has been mentioned that it was held in the Constitutional Court's ruling of 9 December 1998 that the State of Lithuania, when recognising the principles and norms of international norms, may not apply virtually different standards to its own people.

### 3. Constitutional instruments enhancing/dealing with/for social integration

*3.1. What kind of constitutional law does your Court apply in cases of social integration, e.g. fundamental rights, principles of the Constitution ("social state"), "objective law", Staatszielbestimmungen, ...?*

The Constitutional Court applies the constitutional principles, the provisions of the Constitution and the constitutional doctrine to the constitutional justice cases on social security issues as it does to any constitutional justice cases on any issues.

As already mentioned, the constitutional jurisprudence widely applies **the principle of the social orientation of the state.** Every citizen of Lithuania enjoys the right to social security. It has been mentioned that the social orientation of the state is reflected in various provisions of the Constitution which consolidate economic, social and cultural, as well as civil and political rights of a human being, the relations between the society and the state, the bases of social assistance and social security, the principles of the organisation and regulation of the national economy, the bases of the organisation and activity of state institutions, etc. The social character of the state and the social orientation of the state are construed not only in the context of the concrete rights and freedoms of human social rights, but also with the reference to a larger concept of state functions. The Constitutional Court has formulated several obligations for the legislature that the latter must fulfil before it discharges its other functions. For instance, while adopting the law on the state budget, the Seimas must pay heed to the striving for a just and harmonious society that is consolidated in the Constitution, whereas the state budget must be formed in consideration of, *inter alia,* the existing social and economic situation, and of the needs and possibilities of society and the state.

The Constitutional Court's jurisprudence has held on more than one occasion that **the principle of social solidarity** that is consolidated in the Constitution implies that the burden of the fulfilment of certain obligations to a certain extent should also be distributed among members of society, however, such distribution should be constitutionally reasoned, it cannot be disproportionate, it cannot deny the social orientation of the state and the obligations to the state that stem from the Constitution.[26]

The idea of social solidarity means that a person must receive help to protect himself or herself against possible social risks. However, the solidarity of society with the people who are socially vulnerable cannot diminish **the individual responsibility** of every individual of society. The principle of solidarity in a civil society does not deny personal responsibility for one's own fate, therefore, the legal regulation of the social security should be such as to create preconditions and incentives for every member of the society to take care of one's own welfare, but not to rely solely on the social security guaranteed by the state. The recognition of mutual responsibility of a person and the society is important in ensuring social harmony, guaranteeing freedom of a person and a possibility of protecting oneself from difficulties which could not be overcome by one person alone.[27] The social support rendered to a person should not become a privilege; it should not create any preconditions for a person not to seek a higher income and not to search for possibilities of ensuring the living conditions that are in line with human dignity, both to oneself and to one's family by means of one's own effort.[28]

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[26] The Constitutional Court's rulings of 7 June 2007 and 26 September 2007, as well as its decision of 20 April 2010.

[27] The Constitutional Court's ruling of 2 September 2009.

[28] The Constitutional Court's ruling of 5 March 2004.

Thus, the official constitutional doctrine formed by the Constitutional Court recognises that the social maintenance, i.e., the contribution of society for the support of such its members who, due to the important reasons that are provided for by law, are unable to provide themselves from work or from other income, or are provided insufficiently, has the status of a constitutional value.

The social rights of persons are protected not only by means of the aforesaid constitutional principles, but also by means of various provisions of the Constitution: Article 52 of the Constitution guarantees the right to receive old age and disability pensions, as well as social assistance in the event of unemployment, sickness, widowhood, loss of the breadwinner, and in other cases provided for by law; in the deciding of the constitutional justice cases related to the protection of social rights, this norm of the Constitution entrenching the constitutional fundamentals of pensionary maintenance and social support is, perhaps, most often used; Paragraph 1 of Article 48 of the Constitution secures the right to have proper, safe and healthy conditions at work, to receive fair pay for work and social security in the event of unemployment; Paragraph 1 of Article 53 of the Constitution consolidates the duty of the state to take care of people's health; Articles 38 and 39 of the Constitution establish the grounds for the support of maternity and paternity, as well as the support for families raising children; Article 54 of the Constitution guarantees the right to a healthy environment.

In addition, the Constitutional Court has noted on more than one occasion that the legal position *(ratio decidendi)* of the Constitutional Court has the power of precedent in the corresponding constitutional justice cases. The Constitutional Court is bound by the precedents that it itself has created in previous constitutional justice cases and by the official constitutional doctrine that it itself has formed, which substantiates those precedents, as well as by the concept of the provisions of the Constitutions and other legal arguments set forth in the reasoning part of the ruling. Thus, when deciding the constitutional justice cases related to the protection of social rights, the Constitutional Court makes broad reference to the constitutional doctrine formulated in its previous cases.

*3.2. In cases where there is access of individuals to the Constitutional Court: to what extent can the various types of constitutional law provisions be invoked by individuals?*

In the Lithuanian legal system there is still no possibility of a direct access of individuals to the Constitutional Court. However, the persons who believe that a legal act adopted by a law-making subject violates their constitutional rights may apply to courts of general jurisdiction or specialised courts and request that a court suspend the case and apply to the Constitutional Court regarding the compliance of a corresponding legal act with the Constitution. The Constitutional Court's jurisprudence has held on more than one occasion that the right of every person to defend his or her rights on the basis of the Constitution and the right of the person whose constitutional rights or freedoms are violated to apply to court also imply that each party of a case considered by a court, which has doubted on the compliance of the law or other legal act (part thereof) that may be applied in that case and the investigation on the compliance of which with the Constitution (or other legal act of greater power) is attributed to the jurisdiction of the Constitutional Court (i.e. the compliance of a certain act (part thereof) of the Seimas, the President of the Republic or the Government with the Constitution (or other legal act of greater power)), has the right to apply to the court of general jurisdiction or a corresponding specialised court, established under Paragraph 2 of Article 111 of the Constitution, which considers the said case, to request the suspension of the consideration of the case and that this court apply to the Constitutional Court with a petition requesting both an investigation into, and a decision on, whether the legal act (part thereof) passed by the Seimas, the President of the Republic or the Government, which must be applied in the said case, is not in conflict with a legal act of greater power, *inter alia*

(and, first of all) with the Constitution.[29] The decisions of courts to apply or (even though it is requested by a certain party of the case considered in that court) not to apply to the Constitutional Court with a petition requesting both an investigation into, and a decision on, whether the legal act (part thereof) passed by the Seimas, the President of the Republic or the Government, which must be applied in the said case, is not in conflict with a legal act of greater power *(inter alia* (and, first of all) with the Constitution) must be substantiated by legal arguments (reasoning); the argumentation must be rational.[30]

Thus, a court of general jurisdiction or a specialised court, which, under Article 106 of the Constitution, has the right to apply to the Constitutional Court, can either challenge the constitutionality of the legal act pointed out by the individual person at the Constitutional Court or provide reasoned explanations why this should not be done.

The courts, when they apply to the Constitutional Court as for the compliance of a legal act with the Constitution subsequent, *inter alia,* to the request of an individual person, can invoke all constitutional provisions, the constitutional principles, articles of the Constitution, and the constitutional doctrine as it has been developed by the Constitutional Court. In more than a half of all the rulings adopted by the Constitutional Court in the sphere of social security one requested an investigation into the compliance of a certain legal act with Article 52 of the Constitution[31] (this provision of the Constitution is pointed out in 21 rulings of the Constitutional Court on social rights protection issues) and with the constitutional principle of a state under the rule of law (25 rulings of the Constitutional Court on social security).[32] In addition, one has also impugned the compliance of legal acts with Article 29 of the Constitution that consolidates the equality of all persons before the law (13 rulings of Constitutional Court on the issue in question) and with Article 23 of the Constitution that protects the right of ownership (nine rulings).

As mentioned before, namely courts of general jurisdiction and administrative courts are those subjects that initiated the largest number of cases on social security at the Constitutional Court.

*3.3. Does your Court have direct competence to deal with social groups in conflict (possibly mediated by individuals as claimants/applicants)?*

Under Articles 102 and 105 of the Constitution, the Constitutional Court shall decide whether the laws and other acts of the Seimas are not in conflict with the Constitution and whether the acts of the President of the Republic and the Government are not in conflict with the Constitution or laws. According to the provisions of Article 106 of the Constitution, the courts, not less than 1/5 of all the members of the Seimas, the Government, and the President of the Republic have the right to apply to the Constitutional Court.

Thus, under the Constitution, the competence to deal with conflicts of namely social groups is not directly ascribed to the Constitutional Court. In addition, as mentioned before, under the Constitution, in Lithuania, individual persons do not have an opportunity to directly apply to the Constitutional Court, thus, they cannot act as mediators for social groups in the capacity of applicants. However, while administering constitutional justice and deciding on the compliance of impugned legal acts with the Constitution, the Constitutional Court adopts decisions on most varied issues, *inter alia,* on the issues that might lead to objections or

[29] The Constitutional Court's ruling of 28 March 2006.
[30] Ibid.
[31] Article 52 of the Constitution prescribes: "The State shall guarantee its citizens the right to receive old age and disability pensions as well as social assistance in the event of unemployment, sickness, widowhood, loss of the breadwinner, and in other cases provided for by law."
[32] Legal acts were most often impugned in the aspect of proportionality, justice, and infringed legitimate expectations.

disagreements among different members of society. Therefore, it must be stated that the Constitutional Court, while exercising its jurisdiction and deciding the cases in which the issues that are socially sensitive and relevant for a great many members of society enjoys the indirect competence to deal with disputes of social groups when it investigates the compliance of impugned legal acts with the Constitution after petitions have been filed with it by the entities (courts, a group of members of the Seimas, the Government, the President of the Republic) that, under the Constitution, have the right to do so.

*3.4. How does your Court settle social conflicts, when such cases are brought before it (e.g. by annulling legal provisions or by not applying them when they contradict the principle of equality and non-discrimination)?*

Article 107 of the Constitution provides that a law (part thereof), other act of the Seimas, act of the President of the Republic, act of the Government may not be applied from the day of the official publication of the decision of the Constitutional Court that the act in question (part thereof) is in conflict with the Constitution. The decisions of the Constitutional Court on the issues ascribed to its competence by the Constitution shall be final and not subject to appeal.

The Constitutional Court has interpreted that it means that a norm that is in conflict with the Constitution may not be applied from the official publication of the relevant ruling of the Constitutional Court.[33] Every legal act (part thereof) of the Seimas, the President of the Republic or the Government, which is recognised as being in conflict with a certain legal act of greater power, *inter alia* (and, first of all) with the Constitution, is removed from the Lithuanian legal system for good and one will never be able to apply it again. Consequently, after the official publication of the Constitutional Court's ruling stating that a certain act (part thereof) passed by the Seimas, the President of the Republic or the Government is in conflict with a certain legal act of greater power, *inter alia* (and, first of all) with the Constitution, the subject which has passed that legal act has the duty to recognise that legal act (part thereof) as no longer valid or to change it so that it would not be in conflict with the corresponding legal act of greater power, *inter alia* (and, first of all) with the Constitution. However, until the moment of the fulfilment of this constitutional duty, the corresponding legal act (part thereof) may not be applied under any circumstances.[34] Thus, the Constitutional Court, while deciding, subsequent to petitions of the petitioners, the constitutional justice cases, enjoys the constitutional powers to annul the legal power of respective legal acts (parts thereof) in case they are in conflict with legal acts of higher power, *inter alia* (and, first of all) with the Constitution.[35]

After the entry into effect of a ruling of the Constitutional Court that has recognised a law (part thereof) as conflicting with the Constitution, there might appear various indeterminacies in the legal system, *lacunae legis*—gaps in the legal regulation, or even a vacuum. In order to avoid this, the legal regulation must be corrected in time so that the gaps in the legal regulation as well as other indeterminacies could be removed and that the legal regulation might become clear and harmonious. It should be noted that, when new laws are adopted, amended and/or already adopted laws and legal acts are supplemented (also when new legal regulation is established in order to meet the requirements of the Constitution, or when the existing legal regulation is corrected in order to harmonise it with the Constitution), all law-making subjects are bound by the jurisprudence of the Constitutional Court, *inter alia* by the official constitutional doctrine formed therein (in the parts of reasoning of Constitutional Court acts), i.e. by the official concept (official construction) of provisions (norms and

[33] The Constitutional Court's decision of 12 January 2000.
[34] The Constitutional Court's ruling of 28 March 2006.
[35] The Constitutional Court's ruling of 6 June 2006.

principles) of the Constitution, as well as by other legal arguments set forth in acts of the Constitutional Court.[36]

Thus, it should be noted that, under the Constitution, the powers of the Constitutional Court in the settling of *inter alia* social conflicts mean that the Constitutional Court, having found that a concrete legal regulation that could lead to a social conflict is in conflict with the Constitution or other legal act of higher legal power, enjoys the competence to annul the legal power of such a legal act—to remove this legal act from the legal system for good. In order to remove the legal gap that has emerged after the recognition of a concrete legal act as unconstitutional, the legislature is under an obligation to amend the former legal regulation, or to adopt a new one so that the relevant social relations would remain regulated. The legislature, in the course of the implementation of the Constitutional Court's ruling that has, *inter alia,* obligated it to solve the respective social conflict, is bound by the position set forth in the Constitutional Court's ruling and by the construction of the provisions of the Constitution as presented therein.

Under the Constitution, after the Constitutional Court has recognised a law, an act of the President of the Republic, or an act of the Government as being in conflict with the Constitution, the state institutions that issued the corresponding legal act, i.e., the Seimas, the President of the Republic, or the Government, are prohibited from establishing repeatedly any such legal regulation that has been recognised as being in conflict with the Constitution. The power of the Constitutional Court's decision (ruling) to recognise a legal act or part thereof as unconstitutional may not be overruled by any laws or other acts repeatedly adopted by the Seimas, by any acts repeatedly adopted by the President of the Republic, or by any acts repeatedly adopted by the Government.[37] According to the construction provided by the Constitutional Court, in case the prohibition against the overruling of the power of a final act of the Constitutional Court were violated, the principle of the superiority of the Constitution and the related constitutional imperative of the rule of law would alongside be negated, therefore, the consequences of the application of such a legal act (part thereof), *inter alia,* the consequences that emerged prior to the adoption of the relevant decision by the Constitutional Court stating that the said legal act (part thereof) is in conflict with the Constitution, might be regarded as unconstitutional ones. Thus, in some exceptional situations *(inter alia* when a repeatedly adopted legal act makes an attempt to overrule the Constitutional Court's ruling), the Constitutional Court also enjoys the powers to annul not only the legal power of the legal act that is in conflict with the Constitution, but also the legal consequences that were caused by the said legal act and which emerged prior to the adoption of such a decision of the Constitutional Court. It should be noted that the Constitutional Court has not used this measure so far, however, it could be regarded as a very effective measure for settling a social conflict that could emerge due to a repeated adoption of a legal regulation that has been recognised as being in conflict with the Constitution.

*3.5. Can your Court act preventively to avoid social conflict, e.g. by providing a specific interpretation, which has to be applied by all state bodies?*

The Constitutional Court enjoys the powers to investigate the compliance of the officially published and effective laws and other acts (parts thereof) that have been adopted by the Seimas, acts (parts thereof) adopted by the President of the Republic, and acts (parts thereof) adopted by the Government. Such a concept of the powers of the Constitutional Court implies that the compliance of legal acts, which have been adopted by the Seimas or other law-making subjects but have not come into effect yet, cannot be impugned at the

[36] Ibid.
[37] *Inter alia,* the Constitutional Court's rulings of 30 May 2003, 25 October 2011, as well as its decision of 19 December 2012.

Constitutional Court, whilst this means that, in Lithuania, there is no *ex ante* constitutional review that could prevent social conflicts, which, hypothetically, could occur after the adopted legal regulation comes into effect.

However, the Constitutional Court's doctrine has provided a construction to the effect that, having found that the provisions of a law whose compliance with the Constitution is not impugned by the petitioner, but which interfere with the social relations regulated by the impugned law, are in conflict with the Constitution, the Constitutional Court must state so.[38] Thus, in some cases, while investigating the constitutionality of an impugned legal act, the Constitutional Court may, on its own initiative, state that another legal act (not the one that has been impugned) is in conflict with the Constitution. In the situations when a social conflict could be determined by namely the other legal act, the Constitutional Court annuls it on its own without the legal act's constitutionality being impugned by anyone.

While administering constitutional justice and investigating the compliance of legal acts with the Constitution, the Constitutional Court applies and interprets the provisions and principles of the Constitution. There have been a number of situations where the Constitutional Court interpreted the provisions of the Constitution in an especially broad manner and disclosed their meaning in various aspects, not only those investigated in the case. In view of the fact that all constituent parts of a ruling of the Constitutional Court are interrelated and compose a single whole, it follows that, while adopting new, amending and supplementing already adopted laws or other legal acts, the state institutions that pass them are bound not only by the operative part of a Constitutional Court ruling containing the Constitutional Court's decision on the compliance of a concrete legal act with the Constitution, but also by the concept of the provisions of the Constitution and by other legal arguments presented in the reasoning of the Constitutional Court's ruling.[39] Thus, the Constitutional Court sometimes makes use of an opportunity to prevent the adoption of a possibly inappropriate legal regulation, explains the issues, relevant for the public, regarding which it has not received any petitions, and indirectly regulates possible conflict situations before they arise.

The Constitutional Court's ruling adopted on 16 May 2013[40] may be regarded as such an example. This ruling tackled the issues of state social insurance and the duty of certain groups of persons to pay compulsory health insurance contributions. In the same ruling, the Constitutional Court investigated not only the impugned legal regulation and gave answers to the doubts expressed by the petitioners, but also disclosed the content of the state's obligation to take care of people's health and to guarantee medical aid and services for the human being in the event of sickness as consolidated in Paragraph 1 of Article 53 of the Constitution, as well as the content of the constitutional guarantee of the free-of-charge medical aid for citizens at state medical establishments.

It should be noted that in society and among politicians intense discussions had broken out regarding the health reform initiated by the Government, according to which, after the reviewing of the funding of health services from the state budget and the Compulsory Health Insurance Fund, in order to induce the patients to receive medical services at state healthcare establishments, it was decided to stop providing such funding for private medical establishments rendering healthcare services (or to cut such funding significantly); the patients who wished to receive medical services in private medical establishments could not expect that the services rendered to them would be paid with the funds from the Compulsory Health Insurance Fund, but would have to pay for such services themselves, even though the same services would be rendered at state medical establishments free of charge (i.e. they would be financed from the fund established on the grounds of the compulsory health

[38] The Constitutional Court's ruling of 14 January 2002.
[39] *Inter alia,* the Constitutional Court's ruling of 28 March 2006.
[40] Précis of the ruling in the CODICES database: to be included shortly.

insurance contributions). Thus, in case such a reform of health system had been implemented, the patients would have been deprived of their opportunity to choose where they wished to receive medical services—in state or private medical establishments, whilst private medical establishments would have lost the greater part of their patients. It should come as no surprise that the proponents of such a reform had received negative comments from both the patients and the private medical establishments.

In the same constitutional justice case, while deciding on the payment of compulsory health insurance contributions, the Constitutional Court set forth the constitutional fundamentals of health system. The Constitutional Court interpreted the meaning of the provisions of the Constitution regarding the provision of the rendering of medical assistance free of charge, which services may and must be funded with the funds from the compulsory health insurance fund, who can render healthcare services and who, and to which extent, can use such services. The Constitutional Court's ruling held that, when discharging its constitutional function of taking care of people's health, the state must ensure the quality healthcare (not only the medical aid and services for the human being in the event of sickness, including the medical aid to citizens free of charge at state medical establishments, but also other healthcare services for persons and the public) accessible to everyone, as well as other health activity (as, for instance, pharmaceutical activity) that is necessary so that it could be possible to implement, in reality and efficiently, the innate human right to the best possible health. The emergency medical treatment services free of charge (funded from the state budget funds) must be ensured for all citizens, regardless of whether they pay the compulsory health insurance contributions or not, insofar as it is necessary to save and preserve the life of a human being. The striving for the ensuring of the best possible accessibility to vitally important medical aid is also determined by the fact that in the situations where, due to some circumstances, such aid cannot be rendered, in a timely and quality manner, in state medical establishments, it may also be rendered in other healthcare establishments that are able to render such aid in a quality and safe manner; the costs incurred by the latter establishments in the course of the rendering of such aid must be covered with state budget funds. In the same ruling it was also held that, when discharging its constitutional function of taking care of people's health, the state must ensure not only the funding of the medical aid rendered to citizens free of charge, but also the funding of other healthcare services, which, at the choice of the legislature, may be arranged by choosing the compulsory health insurance. Only such healthcare services of the insured persons may be funded with the funds of this insurance, which are not covered by the free-of-charge medical aid. It is not allowed that the services rendered to the persons not insured by the compulsory health insurance (or to those that have not obtained such insurance themselves) be paid for with the funds of the said insurance. The legislature, having opted for the compulsory health insurance, has a duty to establish the legal regulation governing the funding of healthcare services by the said insurance funds that would create preconditions for the state so that it could plan the funding and distribute the funds among the healthcare establishments in a manner where, without denying the obligation of the state to support the economic efforts and initiative that are useful to society and are based on private ownership, the fair competition between healthcare establishments, and the right of the consumer of healthcare services (patient) to choose a healthcare establishment, one would ensure high quality of healthcare services funded by those funds and sufficient accessibility to the said services, i.e. their adequate distribution, as well as the continual operation of the needed network of state healthcare establishments.

Thus, in that ruling, the Constitutional Court made a clear distinction between vitally important medical aid that is funded from the state budget and rendered to all persons irrespective of their social insurance contributions, and which is, consequently, free of charge, and other healthcare services (e.g., family medicine, odontology, one-day surgery, non-urgent in-patient surgery etc.), which the state is unable to fund and which are funded from the compulsory health insurance or from other sources. In addition, it was clearly stated

in the same ruling that, contrary to what was being sought by the launched health reform, the persons covered by the compulsory social insurance may receive healthcare services also in private medical establishments and the latter may receive compensation for both the rendered necessary medical services and the healthcare services. After the Constitutional Court's ruling of 16 May 2013 had been adopted, the initiators of the health reform were obligated to take into consideration these provisions of the official constitutional doctrine, to properly react to the requirements established for the legislature and to prepare the related draft laws within the context of the obligations laid down in the Constitutional Court's ruling.

Under the Constitution, the Constitutional Court also enjoys the powers to construe its rulings. Some provisions of a ruling or other final act of the Constitutional Court might be unclear for the subject that must follow and execute that ruling or other final act of the Constitutional Court. The purpose of the institute of the construction of rulings and other final acts of the Constitutional Court is to disclose the contents and meaning of corresponding provisions of a ruling or another final act of the Constitutional Court more broadly and in more detail, if it is necessary, so that the proper execution of that ruling or other final act could be ensured and that the said ruling or other final act of the Constitutional Court would be invoked.[41] The construction of a ruling of other final act of the Constitutional Court is significant not only in order to ensure the proper implementation of the decision consolidated in the operative part of that act, but also to ensure the fact that in the law-making process one would properly take account of the official constitutional doctrine formed by the Constitutional Court.[42] It should be noted that the Constitutional Court, while construing its rulings so that their proper implementation could be ensured, also helps the prevention of possible social conflicts in case the respective ruling were implemented in an inappropriate manner, it discloses more thoroughly and exhaustively the meaning of the provisions of the formulated constitutional doctrine and helps the law-making subject to properly understand the imperatives stemming from the Constitution. The Constitutional Court has recently been receiving a lot of petitions requesting a construction of the Constitutional Court's rulings adopted on social security issues.[43]

*3.6. Has your Court ever encountered difficulties in applying these tools?*

Every case considered by the Constitutional Court is a unique and specific one, therefore, in the course of the preparation of constitutional justice cases for the judicial consideration and during the consideration of the raised issues, the constitutional instruments applicable for each concrete case are chosen individually. The Constitutional Court has not encountered any difficulties in applying those tools so far.

*3.7. Are there limitations in the access to your Court (for example only by State powers), which prevent it from settling social conflicts?*

As mentioned before, the Constitution has established *expressis verbis* the subjects that have the right to apply to the Constitutional Court: the courts, not less than 1/5 of all the members of the Seimas, the Government, and the President of the Republic can do so. In this report it has been mentioned on more than one occasion that individual persons cannot apply to the Constitutional Court with a petition requesting an investigation into the compliance of a legal act with the Constitution and thus defend their violated right. However,

[41] *Inter alia,* the Constitutional Court's decision of 14 March 2006.

[42] The Constitutional Court's decision of 29 November 2012.

[43] E.g., on 26 February 2014, the Constitutional Court adopted its decision on the construction of the provisions of the aforesaid ruling of 16 May 2013 regarding the fundamentals of health system. The Constitutional Court had been applied to by the Minister of Health who was striving for better implementation of the provisions that had been formulated before. The Constitutional Court has also received petitions requesting a construction of the provisions of the official constitutional doctrine regarding the state pensions of judges, regarding the establishment of a mechanism of the compensation for the losses sustained due to the reduction, etc.

individual persons or groups thereof, if they believe that their rights, *inter alia* the social ones, have been violated by means of a legal act adopted by a law-making subject, may defend their rights at courts of general jurisdiction or specialised courts which, in their turn, have the right to apply to the Constitutional Court. Therefore, it might be assumed that, even though there are not individual persons provided for among those that can apply to the Constitutional Court, the opportunities of the latter to settle social conflicts have not been limited due to this fact.

The other requirements established in the Constitution and laws for the application for the Constitutional Court, the most important one being that the petition must be grounded on legal reasoning, the position must be well-argued and substantiating the doubts about the lawfulness of the legal act, should not be regarded as limitations on the settling of social issues, either.

*To summarise the application of constitutional tools for social integration, it should be noted that the Constitutional Court, while deciding the cases on social issues, applies the constitutional principles* (inter alia *those of a state under the rule of law, the social orientation of the state, social solidarity, individual responsibility for one's destiny, legitimate expectations), the provisions of the Constitution and the official constitutional doctrine formulated by the Constitutional Court. The official constitutional doctrine recognises that social maintenance has the status of a constitutional value. Although citizens do not have an opportunity to apply to the Constitutional Court themselves in order to protect their social rights, however, if they believe that a corresponding legal act violates their right that is guaranteed by the Constitution, they can apply to a court of general jurisdiction or a specialised court which, in its turn, may submit a petition to the Constitutional Court requesting for an investigation into the compliance of a corresponding legal act with the Constitution. The Constitutional Court, when deciding on the compliance of a legal act with the Constitution, and having recognised the respective legal act as being in conflict with the basic law of the country, has the powers to annul the legal power of such a legal act (part thereof), whilst in some exceptional cases—also the legal consequences of such a legal act. The Constitutional Court does not enjoy the powers to act in a preventive manner, i.e. to state its opinion about the compliance of legal acts that have not come into effect yet, however, it has other instruments that it uses in order to prevent the emergence of social conflicts,* inter alia *by means of adopting constructions of its published legal acts, or, in the constitutional justice cases considered by it, by means of the interpretation of the provisions of the provisions of the Constitution in the aspects that are of topical importance for the public.*

## 4. The role of constitutional justice in social integration

*4.1. Does your Constitution enable your Court to act effectively in settling or avoiding social conflict?*

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.

The Constitution does not establish any limitations for the Constitutional Court regarding its activities. While adopting the rulings in which certain social conflicts are settled or an attempt is made to avoid them, the Constitutional Court invokes the Constitution and the constitutional doctrine that it itself has formulated, uses the corresponding instruments of international law and acts as effectively as it does not contradict the Constitution.

Even though constitutional justice cases are normally considered according to the order they were received at the Constitutional Court, if needed, the Constitutional Court, having

considered the type and other circumstances of the case, may decide to consider the case earlier or later. Thus, in case the Constitutional Court believes that the consideration of a certain constitutional justice case could prevent a social conflict, it can tackle that case immediately, and *vice versa*.

The issue of the solving of social conflicts or the effectiveness of the avoiding of such conflicts could be raised not within the context of the Constitutional Court's activity, but, rather, within the context of the execution of the rulings passed by it. The Constitutional Court has held that, after it has recognised that a law (part thereof) is in conflict with the Constitution, that an act (part thereof) of the President of the Republic is in conflict with the Constitution or a law, that an act (part thereof) of the Government is in conflict with the Constitution or a law, a constitutional duty arises for a corresponding law-making subject—the Seimas, the President of the Republic, or the Government—to recognise such a legal act (part thereof) as no longer valid or to change it so that the newly established legal regulation would not be in conflict with legal acts of higher power, *inter alia* (and, first of all) the Constitution. In addition, until the moment of the fulfilment of this constitutional duty, the corresponding legal act (part thereof) may not be applied under any circumstances because its legal power has been annulled.[44] The Constitution does not tolerate any such situation where a corresponding law-making subject *(inter alia* the legislature) avoids or delays the adoption of corresponding laws and other legal acts that, while following the official concept of the provisions of the Constitution—the official constitutional doctrine—set forth in Constitutional Court rulings, would respectively correct the legal regulation that was recognised to be in conflict with legal acts of higher power, *inter alia* (and, first of all) the Constitution.[45]

Thus, if the Constitutional Court adopts a decision to recognise a certain legal act that has violated the social right of a certain person or group of persons due to which a social conflict could have arisen (or arose) as being in conflict with the Constitution, but a corresponding law-making subject does not take any necessary steps and procrastinates the implementation of this Constitutional Court act, it would be impossible to solve the social conflict in an effective manner. However, it should be noted that, generally, the Constitutional Court's rulings are executed effectively enough—at present, round about 85 percent of all the Constitutional Court rulings that recognised the impugned legal acts (parts thereof) as being in conflict with the Constitution have been implemented. The percentage of the implementation of the rulings adopted on social issues is somewhat smaller—76 percent of such rulings have been implemented at present.[46] The ruling of 22 October 2007 regarding the state pensions of judges is one of the most important rulings and the oldest one that has not been implemented yet, however, at present a new law is being drafted, which would implement the said ruling. The other non-implemented Constitutional Court rulings regulate rather narrow aspects of social security, therefore, there is no ground for stating that their non-implementation creates preconditions for the arising of social conflicts.

*4.2. Does your Court de facto act as "social mediator", or/and has such a role been attributed to it?*

Under Article 102 of the Constitution, the Constitutional Court shall decide whether the laws and other acts of the Seimas are not in conflict with the Constitution and whether the acts of the President of the Republic and the Government are not in conflict with the Constitution or laws. When it decides constitutional justice cases, the Constitutional Court is independent and follows only the Constitution.

[44] The Constitutional Court's ruling of 6 June 2006.
[45] The Constitutional Court's decision of 8 August 2006.
[46] All in all, nine rulings of the Constitutional Court that recognised the provisions of legal acts as being in conflict with the Constitution have not been implemented.

Neither the provisions of the Constitution nor the provisions of any other legal acts, *inter alia,* the Law on the Constitutional Court regulating the activity of the Constitutional Court, ascribe *expressis verbis* the role of a "social mediator" to the Constitutional Court. It is difficult to answer whether the Constitutional Court has assumed such a role *de facto,* since the impact of the rulings passed by the Constitutional Court is rather complex: sometimes, the recognition of a certain legal regulation that violates the social rights of a person or a group of persons as being in conflict with the Constitution helps avoid (or solve) a social conflict, however, in some other cases, the passing of a ruling that defends one social group could often mean that the legislature would have to find additional funds and this would have to be done at the expense of another social group, therefore, the avoiding of a social conflict might not necessarily be successful.

*4.3. Have there been cases, when social actors, political parties could not find any agreement, they would "send" the issue to your Court which had to find a "legal" solution, which normally should have been found in the political arena?*

Disagreements, as a rule, arise among political parties, or among social actors, in such areas of social security that are particularly sensitive and a decision adopted wherein is generally topical and resonant to the entire society. It must be admitted that there are also such situations where the Constitutional Court is used as a tool for solving the emerged disagreements. This is done by initiating constitutional justice cases regarding the compliance of the legal acts that have caused the disagreements with the Constitution, or by applying with a petition requesting a construction of the provisions of the already pronounced rulings of the Constitutional Court.

One of such cases includes the constitutional justice case in which the Constitutional Court adopted its ruling of 28 September 2011[47] concerning the constitutional concept of family. The said constitutional justice case was initiated by a group of members of the Seimas following the adoption of the State Family Policy Concept (hereinafter also referred to as the Concept) in the Lithuanian Parliament. The Concept, *inter alia,* stipulated that "family" meant spouses and their children (adopted children), if there were any; it also provided that the family might also be incomplete—in which, upon the termination of a marriage, the children were deprived of one or both parents, or extended—meaning spouses, their children (adopted children), if there were any, and close relatives living together. Thus, under the Concept, the family had been directly related to the fact of the conclusion of a marriage, i.e. the Concept had consolidated the concept of the family based exclusively on marriage. This meant that a man and a woman living together without concluding a marriage and raising children, also single mothers (fathers) raising children by themselves, as well as children growing up with their grandparents, were not regarded as a family. After the said Concept had been adopted, broad discussions broke out among both politicians and the public as to whether such a definition of the family did not discriminate against those groups of society that were not covered by the definition in question. The Concept adopted by the Seimas was a sub-statutory legal act, which expressed the will of the law-making subject regarding certain directions and guidelines of the family policy, but which, in itself, did not create any rights and duties; the Concept created the preconditions for the future legal regulation of family relations. Thus, even prior to the time the question at issue had reached the Constitutional Court, in the debates held at the Seimas by non-governmental organisations, as well as in the media, it had been discussed whether the aforementioned family model was appropriate and whether the protection of the values of the traditional family did not harm certain groups of society. As no agreement had been reached among either politicians or members of the public, the petition was brought before the Constitutional Court requesting it to elucidate as to which concept of family was consolidated in the provisions of the Constitution.

[47] Précis of the ruling in the CODICES database: LTU-2012-1-001.

The Constitutional Court, while deciding that case, elucidated that the constitutional concept of family may not be derived solely from the institute of marriage. The fact that the institutes of marriage and family are consolidated in the same Article 38 of the Constitution indicates an inseparable and unquestionable relationship between marriage and family. However, marriage is one of the grounds of the constitutional institute of family for the creation of family relations. It is a historically established family model, which has undoubtedly had an exceptional value in the life of society and which ensures the viability of the nation and the state as well as their historical survival. Nonetheless, this does not mean that the Constitution does not protect and defend families other than those founded on the basis of marriage, as the relationship of a man and a woman living together without concluding a marriage, which is based on the permanent bonds of emotional affection, reciprocal understanding, responsibility, respect, shared upbringing of the children and similar ones, as well as on the voluntary determination to take on certain rights and responsibilities, which form a basis for the constitutional institutes of motherhood, fatherhood, and childhood. The constitutional concept of family is based on mutual responsibility between family members, understanding, emotional affection, assistance and similar relations, as well as on the voluntary determination to take on certain rights and responsibilities, i.e. on the content of relationships, whereas the form of expression of these relationships has no essential significance for the constitutional concept of family. Therefore, the Seimas, having consolidated in the Concept such notions of family under which only a man and woman who are married or were married as well as their children (adopted children) are regarded as a family, created preconditions for establishing such legal regulation under which the law does not protect and defend other family relations, as the relations of the mutual life of a man and woman who are not and were not married and their children (adopted children), which are based on the permanent bonds of emotional affection, reciprocal understanding, responsibility, respect, shared upbringing of the children and similar ones, as well as on the voluntary determination to take on certain rights and responsibilities, all of which are characteristic of the family as a constitutional institute. The duty of the state to establish, by means of a law and other legal acts, such legal regulation that would ensure the protection of the family as a constitutional value, implies not only the obligation of the state to establish the legal regulation that would create preconditions for a proper functioning of a family, would strengthen family relations and would defend the rights and legitimate interests of family members, but also the obligation of the state to regulate, by means of a law and other legal acts, family relations in such a way that there would be no preconditions created for the discrimination against certain participants of family relations (as, for instance, a man and woman who live together without having registered their union as a marriage, their children (adopted children), single parents who are raising their child (adopted child), etc.).

Nevertheless, even following the adoption of the aforesaid ruling of the Constitutional Court, the discussions among politicians, legal specialists, and members of society continued. However, as the decisions of the Constitutional Court are final and not subject to appeal and have the *erga omnes* effect, the legislature is bound by the obligation to regulate the question at issue in such a way as it was construed by the Constitutional Court in its ruling of 28 September 2011. It is true that, after the genuine meaning of the provisions of the Constitution governing the concept of family had been construed by the Constitutional Court, an initiative to alter these provisions of the Constitution was registered in the Seimas, as it was sought to consolidate, at the constitutional level, the traditional family model based on marriage, which is supported by a part of members of society and politicians, however, the provisions of the Constitution consolidating the concept of family have not been altered.
The Constitutional Court has also received the petitions requesting a construction of the provisions of the Constitutional Court's ruling passed regarding the cases on the reduction of old-age pensions,[48] the provisions of the non-implemented ruling of the Constitutional Court of 29 June 2010 regarding the state pensions of judges; another petition requests a

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

construction of the legislature's duty to establish a mechanism of the compensation for the losses sustained due to the unlawful reduction of the remuneration of state servants, judges and politicians,[49] etc.

*To summarise the role of constitutional justice in the sphere of social integration, it needs to be emphasised that there exist situations when namely the Constitutional Court, when considering constitutional justice cases and interpreting the provisions of the Constitution and formulating the constitutional doctrine helps solve social conflicts in society or prevent the emergence of such conflicts. There exist also such situations when the Constitutional Court is used in order to solve the disagreements that occur amongst political parties, public figures and other actors in the social space; a dispute, in case it reached the Constitutional Court, becomes a constitutional issue and the decision made by the Constitutional Court is final, not subject to appeal, and compulsory for all.*

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