



**THE CONSTITUTIONAL COURT OF THE  
REPUBLIC OF LITHUANIA**

*The 2nd Congress of the World Conference on Constitutional Justice*

**SEPARATION OF POWERS AND INDEPENDENCE OF CONSTITUTIONAL  
COURTS AND EQUIVALENT BODIES**

*National report*

**“THE PRINCIPLE OF SEPARATION OF POWERS AND INDEPENDENCE OF THE  
CONSTITUTIONAL COURT OF THE REPUBLIC OF LITHUANIA”**

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**WORLD CONFERENCE ON CONSTITUTIONAL JUSTICE**

## THE PRINCIPLE OF SEPARATION OF POWERS AND INDEPENDENCE OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LITHUANIA

In the constitutional structure of state powers of any democratic state the principle of separation of powers plays an exceptionally important role. This principle seeks to ensure that state power would not be entrusted to a single institution. Traditionally, state power is divided into the legislature, the executive, and the judiciary branches. In the democratic system, each of such a branch is defined as having certain powers and competencies, giving the legal basis for execution of its direct functions, as well as powers *vis-à-vis* one another, so that each of them might be able to prevent one another from overstepping the limits of their powers and competencies and from abuse of power. The interaction among these branches of power, which is manifested by cooperation among state institutions, coordination of actions, containment *vis-à-vis* one another is one of the most important factors securing the democratic character of state power, the supremacy of law and the rights and freedoms of the person.

The Constitutional Court of the Republic of Lithuania has held more than once in its jurisprudence that the constitutional principle of separation of powers means that the legislative, executive and judicial powers must be separated, sufficiently independent but also there must be a balance among them. The Constitution establishes to each state institution the competence corresponding to its purpose, where the concrete content of the competence depends on the place of this institution in the general system of branches of power and on the relation of this institution with other branches of power, and on the place of this institution among other state institutions as well as the relation of its powers with those of other institutions; after the powers of a concrete state institution have been directly established in the Constitution, then a certain state institution may not take over the said powers from another state institution, it may not transfer or waive them; such powers may not be amended or limited by means of a law.<sup>1</sup>

In the Constitution of the Republic of Lithuania the principle of separation of powers is not established directly. Since in Article 5 of the Constitution, from which this principle is derived, merely enumerates state institutions, but it does not establish that they must be separated and independent. Still, in the jurisprudence of the Constitutional Court it has been emphasised more than once that this universal principle of a democratic law-governed state is derived namely from Article 5 of the Constitution<sup>2</sup> wherein it is entrenched that, in Lithuania, state power shall be executed by the Seimas (Parliament), the President of the Republic and the Government, and the Judiciary, the scope of power shall be limited by the Constitution, and state institutions shall serve the people. This principle is disclosed in more detail also in other articles of the Constitution, in which *inter alia* the competence, powers of each branch of state power and interaction among such branches are entrenched. Thus, the principle of separation of powers is to be regarded as a

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<sup>1</sup> See *inter alia* the rulings of the Constitutional Court of the Republic of Lithuania of 23 August 2005, 6 June 2006, and 2 March 2009.

<sup>2</sup> See *inter alia* the Constitutional Court rulings of 19 January 1994, 10 January 1998, 4 March 1999 etc.

principle, which is derivative from provisions of the Constitution, and which grounded upon systemic interpretation of the entire Constitution as an integral act.<sup>3</sup>

In Lithuania the legislative power is executed by the Seimas, the executive—by the President of the Republic and the Government according to the competence granted to each, and the judicial power—by the judiciary. Certain peculiarities are characteristic of each specified branches of state power, and such peculiarities are determined by the nature of these branches, they function according to the competence established to them in the Constitution and laws, and may not take over the competence of another state institution. It has been mentioned that the principle of separation of powers implies not only independence of branches of state power, but also a balance among their respective powers, thus all state institutions have certain powers *vis-à-vis* one another. The Seimas, the Government and the President are bound by the relations of intermutual control and of appointment of high ranking officials, by a possibility to express no-confidence etc. Such a system of checks and balances helps ensure that all state institutions will act within the limits of their powers and will follow the competence established in the Constitution and laws. The legislature enjoys powers *vis-à-vis* the executive, and *vice versa*, thus, in the course of the implementation of the functions ascribed to them, state institutions often must act together. The Constitutional Court has noted that, when general tasks and functions of the state are being accomplished, the activities of state institutions are based on their co-operation, therefore their interrelations are to be defined as inter-functional partnership.<sup>4</sup>

Courts take an equal place in the system of state powers alongside the legislature and the executive, however, they are essentially different from the other two branches of state power. Courts, as well as other state institutions, act in the name of the state, and decisions adopted by them quite often acquire the power of a legal source. Although the President and justices of the Supreme Court are appointed by the Seimas upon presentation by the President of the Republic, the President and judges of the Court of Appeal are appointed by the President of the Republic upon approval of the Seimas, and the President and justices of the Constitutional Court are appointed by the Seimas upon presentation by the President of the Republic, the Speaker of the Seimas and the President of the Supreme Court, judges and presidents of regional, local and specialised courts are appointed by the President of the Republic, i.e. in the course of forming the judiciary the legislature and/or the executive take part, and, sometimes, also representatives of all three branches of state power (in the case of the Constitutional Court), the judiciary is the only branch of power which is formed not on political, but professional grounds. Courts are not subordinate either to the legislature or the executive. The powers of courts are directly entrenched in the Constitution, which provides that in the Republic of Lithuania, justice shall be administered

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<sup>3</sup> Kūris E. Valdžių padalijimo principas Lietuvos Respublikos Konstitucinio Teismo jurisprudencijoje [The Principle of Separation of Powers in the Jurisprudence of the Constitutional Court of the Republic of Lithuania] //Konstituciniai valdžių sandaros principai [Constitutional Principles of Framework of Branches of State Power]. Vilnius, 2008. pp. 14-15.

<sup>4</sup> The Constitutional Court ruling of 10 January 1998.

only by courts.<sup>5</sup> They implement their power independently. While administering justice, courts secure the implementation of the law expressed in the Constitution, laws, and other legal acts, they guarantee the supremacy of law and seek to protect human rights and freedoms. Under the Constitution, the activity of courts is not regarded and may not be regarded as an area of administration ascribed to any institution of the executive. Only the powers designated to create conditions for the work of courts may be granted to institutions of the executive.

Theoreticians derive the principle of independence of courts—one of the three branches of state power—namely from the universal principle of separation of powers. The independence of judges and courts is inseparable from administration of justice. Only being self-dependent, independent from other branches of state power, the judiciary can implement its function of administration of justice. The independence of the judiciary is, as a rule, analysed from two aspects—external (independence of courts from other branches of state power) and internal (independence of judges from parties to the case, from influence of other judges etc.).<sup>6</sup> The autonomy of the judiciary from political branches of power guarantees its impartiality, whereas the independence guarantees for judges established in the Constitution and laws allow to prevent anyone seeking to interfere with the actions of a judge or a court in adopting a fair decision. The independence of judges and courts is not an end in itself, but a necessary condition for protection of human rights and freedoms, it is not a privilege, but one of the most important duties of judges and courts, which stems from the right (guaranteed by the Constitution) of every person who believes that his rights and freedoms have been violated to have an impartial arbiter of the dispute.<sup>7</sup> Alongside, it is an enormous responsibility, a factor, which guarantees the protection of human rights and freedoms.<sup>8</sup>

The principle of independence of judges and courts is entrenched *expressis verbis* in Paragraphs 2 and 3 of Article 109 of the Constitution of the Republic of Lithuania. In the constitutional provisions it is clearly stated that, while administering justice, the judge and courts shall be independent, and that judges, when considering cases, shall obey only the law. This provision is applied not only to courts of general jurisdiction, but also the Constitutional Court: while administering constitutional justice, justices of the Constitutional Court and the court itself are independent.

In its acts the Constitutional Court has formulated a broad official constitutional doctrine of the independence of the judge and courts, wherein the constitutional imperative of the independence of the judge and courts is construed in the context of the constitutional principle of a state under the rule of law (which, as the Constitutional Court has held in its acts more than once,

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<sup>5</sup> Paragraph 1 of Article 109 of the Constitution.

<sup>6</sup> Mikelėnas V. Kokių teismų reikia Lietuvai? [What Courts Does Lithuania Need?] // *Justitia*, 2006. No. 3. p. 6.

<sup>7</sup> *Inter alia* the Constitutional Court ruling of 9 May 2006.

<sup>8</sup> Valančius V. Teismo ir teisėjų nepriklausomumo, savarankiškumo ir savivaldos realizavimo problemos [The Problems of Implementation of Independence, Self-dependence and Self-governance of the Court and Judges] // *Jurisprudencija*, 2000, No. 17 (9). pp. 54-55.

integrates various values consolidated in and protected and defended by the Constitution and which grounds the whole system of Lithuanian law and the Constitution itself). The contents of the safeguards guaranteeing the independence of judges and courts while administering justice first of all arises from their independence from any interference with their activities on the part of the parties to the case, as well as from the influence of the institutions of state power, government as well as social institutions, corporate, unlawful private or other interests.<sup>9</sup> The Constitution prohibits that the executive interfere with administration of justice, exert any influence on courts or assess the work of courts regarding investigation of cases, let alone give instructions as to how justice must be administered.<sup>10</sup> A judge does not have to account to any state institution or officials for the cases at law that are under his investigation, he does not have to present his cases for anyone to acquaint with only with the exception of the situations provided for in procedural laws.<sup>11</sup> The independence of the judge and courts is *inter alia* ensured by consolidating self-governance of the judiciary, meaning that the judiciary is full-fledged power, and its financial and technical provision, and by establishing the inviolability of the term of powers of the judge (whereby one seeks to ensure that the judge, irrespective of the political forces in power, would remain independent and would not be forced to adjust according to the possible changes of political forces) and the inviolability of the person of the judge, as well as by establishing the social (material) guarantees of the judge.<sup>12</sup>

The Constitutional Court has noted that the assessment of the system of guarantees of independence of judges and courts permits to assert that they are closely interrelated. It is impossible to assess independence of judges and courts according to a single, even though important, element, therefore it is universally recognised that in case any guarantee of independence of judges and courts is violated, administration of justice might be damaged, there might appear a danger that neither human rights and freedoms will be ensured, nor the supremacy of law will be guaranteed. The system of guarantees of independence of judges and courts does not create any pre-conditions on the grounds of which judges could evade proper fulfilment of their duties, investigate cases in an improper manner, act unethically with the people taking part in the case, violate human rights and dignity. The independence of judges and courts is indivisible. When the activity of courts is regulated by the law, it is not permitted that the concept of the judiciary, which is established in Article 5 and other articles of the Constitution as an independent and full-fledged state power, be denied.<sup>13</sup>

In Lithuania, the Constitutional Court is part of the judiciary,<sup>14</sup> therefore, the principle of independence of courts and judges is applied to this court as well. The Constitutional Court discharges its functions independently from any influence of state institutions, and the latter may

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<sup>9</sup> The Constitutional Court ruling of 6 December 1995.

<sup>10</sup> The Constitutional Court ruling of 21 December 1999.

<sup>11</sup> *Op. cit.*

<sup>12</sup> The Constitutional Court ruling of 22 October 2007.

<sup>13</sup> The Constitutional Court ruling of 21 December 1999.

<sup>14</sup> See the Constitutional Court ruling of 6 June 2006.

not interfere with the activity of this court. While considering the cases in which issues directly related with powers of state institutions and delimitation of their competence are raised, the Constitutional Court helps ensure the adherence to the principle of separation of powers in the legal system of the state. While doing so, the Constitutional Court only emphasises its own independence. For example, in the Constitutional Court ruling of 10 January 1998, while investigating the compliance of the Seimas resolution which had approved the Programme of the Government with the Constitution, the question was raised regarding the powers and influence of the Seimas and the President of the Republic in the process of formation of the Government. In the Programme of the Government approved by a Seimas resolution, the Government activity had been provided for till the end of office of the Seimas, but not till the end of powers of the President of the Republic, although, under the Constitution, after a new President of the Republic is elected, the Government in office returns its powers to the newly elected President of the Republic. The Constitutional Court, while remaining an impartial arbiter of the dispute at the intersection of interests of state institutions, defined the limits of powers of the legislature and the executive in the process of formation of the Government, it construed that two subjects participate in the course of formation of the Government—the President of the Republic who presents the candidature of the Prime Minister to the Seimas, and the Seimas that approves this candidature, assents to the programme of the Government and thus grants the Government the powers to act. However, the influence of these two subjects in the process of formation of the Government has different significance: after the term of office of the Seimas is over, a new Government is formed, whose programme must be assented to by the newly elected Seimas so that the Government would receive the powers to act; meanwhile, after the election of the new President of the Republic, the Government which still enjoys the confidence of the Seimas can continue to act, whereas the returning of powers of the Government to the newly elected President of the Republic allows him to check whether the Seimas continues to have confidence in the existing Government. The President of the Republic exerts influence on the personal composition of the Government but does not decide whether such a Government can act. The Court in this constitutional justice case held among other things that such constitutional establishment of powers of and mutual relations between state institutions in the formation of the Government reflects the principle of separation of and balance among branches of state power as well as the model of parliamentary governance to which Republic of Lithuania is to be ascribed.

The efficiency of the Constitutional Court in the course of verification of the constitutionality of legal acts adopted by the legislature directly depends upon the ensuring the independence of this court from state institutions. The independence of the Constitutional Court from other state institutions is also shown by the fact that the Constitutional Court may decide that the acts adopted by the legislature or by the executive are unconstitutional and may not be applied in the legal system of the state, meanwhile, neither the legislature, nor the executive is allowed to annul the decisions adopt by the Constitutional Court.

The principle of independence of judges and courts, which is entrenched in the Constitution, as well as the constitutional right of the person to a public and fair hearing of his case by an independent and impartial court, implies the duty of the state to establish the guarantees of independence of judges and courts. The independence and impartiality of judges and courts can be secured by various means. The independence of judges and courts is secured by entrenching, by means of laws, their procedural independence, their organisational self-dependence and self-governance, the status of judges, the social (material) guarantees of the judge, and by establishing prohibitions and limitations upon judges to consider cases if there are circumstances leading to doubts as for impartiality of the judges.<sup>15</sup>

**I. The guarantees of the independence of the Constitutional Court as an institution** are entrenched in the Constitution, the Law on the Constitutional Court and the Rules of the Constitutional Court. Paragraph 5 of Article 5<sup>1</sup> of the Law on the Constitutional Court imperatively prescribes that restriction of the guarantees securing the independence of the Constitutional Court shall be prohibited.

The provisions of the Constitution, which guarantee the independence of the Constitutional Court, are detailed by the broad constitutional doctrine, as well as the provisions of the Law on the Constitutional Court. It has been mentioned that, while discharging their duties, the Constitutional Court and its justices shall be independent of any other state institution, person or organisation, and shall follow only the Constitution and the laws which are not in conflict with the latter. Interference with the activities of a justice or the Constitutional Court by institutions of state power and administration, Members of the Seimas and other officials, political parties, political and public organisations, or citizens shall be prohibited and shall incur liability provided for by law. In order to protect the Constitutional Court from any external influence and disturbance, rallies, pickets, and other actions staged within 75 metres of the Constitutional Court building or in the Court itself, providing they are aimed at influencing a justice or the Court, are regarded as interference with the activities of a justice or the Court and incur the liability provided for in the law.

It has been held in the jurisprudence of the Constitutional Court that the principle of independence of the judge and courts entrenched in Paragraph 2 of Article 109 of the Constitution encompasses the organisational independence of courts as well. Neither an institution nor an official of the executive may interfere with the exercise of functions of courts or organise the internal work courts. Such a guarantee is provided for in Article 3 of the Law on the Constitutional Court, which provides that internal questions of the Constitutional Court, the rules of professional conduct of justices, the structure of the Court apparatus, clerical work, and other issues shall be regulated by the Rules of the Constitutional Court, as approved by the Constitutional Court. The Rules of the Constitutional Court were approved by a decision of the Constitutional Court. The Rules establish the procedure of organisation of work at the Constitutional Court, the rules of preparation of the hearings, the structure, the staff of the Court and other issues.

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<sup>15</sup> The Constitutional Court ruling of 12 February 2001.

In its jurisprudence the Constitutional Court has held that a part of independence of courts is *inter alia* financial independence of courts which is secured by such legal regulation whereby funds to the system of courts and to each court are allocated in the state budget which is approved by means of a law, and that such guarantee of the organisational independence of courts is one of essential preconditions for securing human rights; the state budget must provide as to how much funds are to be allocated to every individual court so that proper conditions would be created for administration of justice (Constitutional Court rulings of 21 December 1999 and 9 May 2006). The official constitutional doctrine has emphasised that the legislative regulation whereby the institutions or officials of the executive (but not the Seimas, by means of approving the state budget by law) would allocate financial appropriations to concrete courts, would not be coordinated with the principles of separation of the executive and the judiciary, of independence and mutual self-dependence of these branches of power, which are established in the Constitution, and would create an opportunity for the executive to exert influence upon activities of courts. The institutions of the executive, while preparing a draft state budget and seeking to achieve that the draft state budget would provide sufficient funds for securing proper activities of courts, have the right to receive information from presidents of courts about the needs of courts.

Thus, while seeking to secure the implementation of the principle of financial independence, the budget of the Constitutional Court, as well as the budgets of other courts, is planned and a draft budget is prepared by the Government, whereas the draft budget prepared by the Government is approved by the Seimas by means of a law. Each year, the Constitutional Court submits investment projects, amounts of appropriations and other plans about predicted expenditures for the next budget year to the Ministry of Finance, which is responsible for preparation of a draft state budget. After the Seimas has approved the budget of the Constitutional Court by means of a law, the allocated sum may not be changed. It can be reviewed only if there occurs and especially grave economic and financial situation in the state. The Constitutional Court disposes of the funds allotted to it freely and independently from institutions of the executive, it distributes the funds according to its needs and decides by itself regarding their use in various aspects. State institutions do not have a possibility, while following legal acts adopted by themselves and taking account of the decisions adopted by the Constitutional Court, to reduce the appropriations allocated to the Constitutional Court or otherwise to influence the activity of the Court in the financial aspect.

The Law on the Constitutional Court has entrenched the provisions also regulating the formation of the technical and material basis of the Constitutional Court. The law provides that the buildings and other assets which are used by the Constitutional Court shall be state property transferred to the Constitutional Court on trust into possession, use and disposal of. These assets may not be taken over or transferred to other subjects without the consent of the Constitutional Court.



The independence guarantees entrenched in laws allow the Constitutional Court not to fear reduction of independence or external influence also when decisions unfavourable to the ruling political parties or decisions which stir enormous repercussions in society are adopted. It is possible to regard an example of such a decision, which gave rise to many discussions among politicians and the public, which is one of the most prominent cases of the Constitutional Court, in which one assessed the compliance of actions of the President of the Republic after the Seimas had initiated the impeachment proceedings. The conclusion presented by the Constitutional Court determined removal of the President of the Republic from office.<sup>16</sup> Regardless of all assessments in the media and among the public, contradictory opinions and statements by various interest groups, the Constitutional Court, while assessing the circumstances of the case and adopting the decision, remained impartial and objective. In addition, one is also to mention one of the most recent decisions of the Constitutional Court in which it was *inter alia* held that the Government is not allowed to adopt a decision to reduce pension payments to working pensioners more than non-working pensioners during a period of economic hardship, therefore, the reduced part of the pension for working pensioners will have to be fairly compensated.<sup>17</sup>

**II. The principle of independence of justices of the Constitutional Court** is entrenched not only in the provision of the Constitution that while administering justice, the judge and courts shall be independent, but also in Article 104 of the Constitution wherein it is maintained that, while in office, justices of the Constitutional Court shall be independent of any other state institution, person or organisation, and shall follow only the Constitution of the Republic of Lithuania.

A justice of the Constitutional Court is also obliged to be independent by his oath, which, under Paragraph 2 of Article 104 of the Constitution, is taken before his entering office. Justices of the Constitutional Court take an oath at the Seimas to be faithful to the Republic of Lithuania and the Constitution, to honestly and conscientiously discharge the duties of the justice of the Constitutional Court, to defend the constitutional order of the independent State of Lithuania and to protect the supremacy of the Constitution, obeying only the Constitution of the Republic of Lithuania.

In its jurisprudence, the Constitutional Court has analysed more than once the guarantees of independence of judges. According to the fact how the independence of judges and the court established in Paragraph 2 of Article 109 of the Constitution are detailed in laws, the independence guarantees of judges may, conditionally, be divided into three groups:

- a) inviolability of the length of powers of a judge;
- b) personal immunity of a judge,
- c) guarantees of social (material) character of a judge.<sup>18</sup>

With regard to a judge who conscientiously discharges his duties, while securing the inviolability of his powers, Article 115 of the Constitution 115 contains a guarantee that a judge

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<sup>16</sup> The Constitutional Court conclusion of 31 March 2004.

<sup>17</sup> The Constitutional Court decision of 20 April 2010.

<sup>18</sup> See the Constitutional Court ruling of 6 December 1995.

may be dismissed from office, under procedure established by the law, only on the grounds which are specified in the Constitution. The principle of the independence of the judge, entrenched in the Constitution, implies only such legislative regulation of the term of powers of judges whereby, when appointing a judge, he would know the term of his powers (until the time established by the law or until he reaches the pensionable age established by the law). The guarantee of inviolability of the term of powers is also important because of the fact that, regardless of what political parties are in power, the judge would remain independent, he should not adjust himself to possible changes of political forces in power. Thus, the term of powers of a judge cannot become dependent upon future free-discretion decisions of the state institutions that have appointed him to office. Under Article 108 of the Constitution, the powers of a justice of the Constitutional Court shall cease upon the expiration of the term of powers; upon his death; upon his resignation; when he is incapable to hold office due to the state of his health; when the Seimas removes him from office in accordance with the procedure for impeachment proceedings. This list of ceasing of powers is exhaustive (final), it may not be amended or supplemented by means of a law.

The guarantee of the inviolability of the person of the judge means, first of all, immunity against bringing to liability, however, also to a great extent it means protection of his person against attempts of external influence upon him. The inviolability of the person of a justice of the Constitutional Court is entrenched in Paragraph 2 of Article 114 of the Constitution 114, which is applied to all judges, wherein it is established that a judge may not be held criminally liable, arrested or have his freedom restricted otherwise without the consent of the Seimas, or, in the period between the sessions of the Seimas, without the consent of the President of the Republic, and also in Paragraph 4 of Article 104 of the Constitution wherein it is entrenched that justices of the Constitutional Court shall have the same rights concerning the inviolability of their person as shall Members of the Seimas. The constitutional provisions are detailed in Article 8 of the Law on the Constitutional Court which points out that questions of consent to hold a justice of the Constitutional Court criminally liable shall be considered only upon the presentation by the Prosecutor General. The justice of the Constitutional Court who is detained or delivered to a law enforcement institution without personal documents must immediately be released upon establishing his identity.

The immunity of a justice of the Constitutional Court against administrative liability is not established in the Constitution, save the cases when administrative liability is related with restriction of freedom. On the other hand, an ungrounded attempt to bring a justice to administrative liability in certain circumstances may actually mean an interference with his activities with an attempt to make an impact on the decisions of the justice, or revenge for decisions already made by him. As it was noted in a ruling of the Constitutional Court, an obligation arises from the Constitution for the legislator to establish the procedure for bringing a judge to administrative liability, which could provide the maximum protection to the judge from unreasonable attempts to

bring him to administrative liability.<sup>19</sup> According to the Constitutional Court, a procedure for bringing a judge to administrative liability, in which institutions of the judiciary would be allowed to participate, for example, a court of higher level or an institution of self-governance of judges would give a consent for bringing the judge for administrative liability, so that no influence prohibited by the Constitution would be exerted upon his activities, would be in compliance with the Constitution.

Disciplinary actions may not be brought against a justice of the Constitutional Court. The questions of service-related liability of a justice of the Constitutional Court and those of non-performance or improper performance of duties are decided by the Constitutional Court itself. Article 12 of the Law in the Constitutional Court provides that for failure to carry out the established duties, for non-attendance of Court sittings without good reason, a pecuniary penalty—reduction of salary—may be imposed.

The guarantees of social (material) character of the principle of independence of judges, which is entrenched in Paragraph 2 of Article 109 of the Constitution, are of no less importance. In democratic states it is recognised that the judge, who is obligated to settle conflicts arising in society, as well as those between a person and the state, must be not only highly professionally qualified and of impeccable reputation but also materially independent and feel secure as to his future. The state has a duty to establish such salaries for judges which would be in conformity with the status of the judiciary and judges, with the functions exercised by them and their responsibility.<sup>20</sup> The Constitutional Court, while interpreting the constitutional principle of independence of the judge and courts, held that the protection of judges' salaries and their other social guarantees is one of the guarantees of securing this principle. The constitutional imperative of the protection of judges' salaries and other social guarantees arises from the principle of independence of judges and courts established in Article 109 of the Constitution. By this principle one attempts to protect the judges administering justice from any influence of the legislative power and the executive, as well as from that of other state establishments and officials, political and public organisations, commercial economic structures, and legal and natural persons. It implies the state duty to ensure such social (material) maintenance for judges which would be in conformity with the status of the judges when they are in office, as well as after expiry of the term of their office. It is asserted in the jurisprudence of the Constitutional Court that in order to secure independence of the judge and courts from the legislature and the executive, it is prohibited to reduce the salary or other social guarantees of the judge during his continuance in office, and that any attempts to reduce the remuneration of the judge or his other social guarantees, or limitation of financing of courts are treated as encroachment upon the independence of judges and courts, save the cases when there occurs an especially grave economic-financial situation in the state and there is an objective lack of funds in the state budget.<sup>21</sup> The Constitutional Court has noted that

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<sup>19</sup> The Constitutional Court ruling of 17 December 2007.

<sup>20</sup> The Constitutional Court ruling of 12 July 2001.

<sup>21</sup> It was noted in the Constitutional Court ruling of 28 March 2006 that if one established such legal regulation, whereby in case of an extremely difficult economic and financial situation of the country it would

that manipulations with the size of judges' salaries and with the extent of their social guarantees are characteristic of the practice of undemocratic states.

Under the Constitution, remunerations of judges must be established by means of a law. The social (material) guarantees of judges must be differentiated according to establishment of such guarantees to the judges of respective system of courts and of the level of the court. The remuneration relations of justices of the Constitutional Court are to be regulated in the Law on the Constitutional Court. The guarantee of material (social) maintenance of judges is often related with another aspect of independence—the prohibition commandingly entrenched in Paragraph 1 of Article 113 of the Constitution not to receive, during the entire time of his professional career, any remuneration other than the remuneration established for the judge and payment for educational or creative activities.

The Constitutional Court, while developing the doctrine of social (material) guarantees of judges, has also held that such guarantees must be granted to the judge not only when he is in office, but also upon expiry of his powers. Upon expiry of powers of the judge, the social (material) guarantees of the judge may be varied ones, *inter alia* the payments paid periodically, as well as one-time payments, etc. Such guarantees must be real and not nominal. In one of the recent cases considered by the Constitutional Court the issue of material guarantees of judges was raised once again. In that constitutional justice case one investigated *inter alia* the right of justices of the Constitutional Court to receive the state pension of judges, whose amount depends upon the work-record of the judge, when calculation is made on the basis of a five-year interval (the size of the state pension of judges becomes different depending on the fact whether the judge has worked 5, 10, 15, etc. years). Since justices of the Constitutional Court are appointed only for a single nine-year term of office, under the then valid legislative regulation they used to acquire the right to receive the minimum state pension of judges (the same as was received by the judges who had worked in the courts of the lowest level for five years). The Constitutional Court noted that justices of the Constitutional Court differ from judges of other courts in regard to their constitutional status, *inter alia* the term of their powers, therefore, the legislator, while regulating the relations of the social (material) guarantees of judges upon expiry of the term of their office, must take account of this fact. Therefore the said legal regulation was recognised as being in conflict with the

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not be permitted to reduce the financing of courts only, nor to reduce the remuneration of judges only, it would mean that courts are groundlessly singled out from among other institutions which implement state power, and judges—from among other persons that participate in implementing powers of the corresponding institutions of state power. The consolidation of such exceptional situation of courts (judges) would not be in line with the requirements of an open, fair and harmonious civil society and the imperatives of justice. Alongside, it was emphasised that it is allowed to worsen the financial and material-technical conditions for the functioning of courts that are provided for by laws and to reduce the remuneration of judges only by means of a law, and that it is allowed to do so only temporarily, for the period of time when the economic and financial condition of the state is extremely difficult; by such reduction of the remuneration no preconditions should be created for other institutions of state power and their officials to violate the independence of courts. Even in the case of the extremely difficult economic and financial situation of the state, neither the financing of courts, nor remuneration of judges may be reduced to the extent that the courts would not be able to implement their constitutional function and obligation—to administer justice—or the possibility of the courts to do that would be restricted.

Constitution, since it had created preconditions for making totally equal the sizes of the state pensions of the judges who have gained the work record as a judge of a considerably different duration (e.g., five and nine years), and for granting the state pension of judges of a considerably different size to the judges the duration of whose work record as a judge differs insignificantly (e.g., nine and ten years).<sup>22</sup>

Another guarantee that judges will administer justice properly, independently and impartially is their qualification: only the persons with high legal qualification and having experience of life may be appointed as judges. Judges must be of impeccable reputation. It means that special professional and ethical requirements are raised for judges. The judge must feel greatly responsible for how he administers justice—performs the obligation established to him in the Constitution.

Paragraph 3 of Article 103 of the Constitution provides that citizens of the Republic of Lithuania who have an impeccable reputation, who have higher education in law, and who have not less than a 10-year work record in the field of law or in a branch of science and education as a lawyer, may be appointed as justices of the Constitutional Court. In its ruling of 20 February 2008, the Constitutional Court, while assessing the legal regulation related with requirements for the professional qualification of judges, noted that in a state under the rule of law the highest possible professional qualification requirements as well as those of legal education can and must be raised to the persons who seek to become judges (even if such highest professional qualification requirements are not raised to other representatives of the legal profession) and that such persons are required to have acquired such university higher education in law, which can only be ensured by university two-stage sequential studies of the trend of law (i.e. the qualification degrees of bachelor of law and master of law) or integrated studies of the trend of law, when university first- and second-stage studies are related by sequence.

The Rules of the Constitutional Court detail ethical requirements for justices of the Constitutional Court, from among which one should mention the duty of a justice, while considering a constitutional justice case, not to submit to the influence of institutions of power or governance, of officials, mass media, the public, and individual citizens, the prohibition for a justice to publicly express his opinion concerning an issue which is either under consideration or has been adopted for consideration in the Constitutional Court, the prohibition to accept presents and other signs of favour, if this is done in order to seek to influence the course of a considered case or the decision in the case.

The special legal situation (which is entrenched in the Constitution) of the judiciary, as one of the branches of state power, and the principle of independence of judges and courts also determine the legal status of a judge. Paragraph 3 of Article 104 of the Constitution provides that the limitations on work and political activities which are established for court judges shall apply also to justices of the Constitutional Court. Under Article 113 of the Constitution, a judge may not hold

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<sup>22</sup> The Constitutional Court ruling of 29 June 2010.

any other elected or appointed office, may not work in any business, commercial, or other private establishments or enterprises; also he may not receive any remuneration other than the remuneration established for the justice and payment for educational or creative activities; a judge may not participate in the activities of political parties and other political organisations, he may not express publicly his political convictions and engage in political activism. A justice of the Constitutional Court may not act as counsel for the defence or as a representative of any other enterprise, establishment, organisation or person. The said limitations are applied to a justice of the Constitutional Court as from the day when he begins to hold office. An appointed justice of the Constitutional Court must remove incompatibilities with the office of a justice of the Constitutional Court (Paragraph 3 of Article 104 and Article 113 of the Constitution) until the oath in the Seimas. If the removal of the said incompatibilities depends upon decisions of certain institutions (officials), these institutions (officials) have a duty to adopt respective decisions until the oath of the justice of the Constitutional Court in the Seimas.

In its jurisprudence, the Constitutional Court has disclosed one more aspect of the status of a judge. It was emphasised in the ruling of 9 May 2006 that one of the important aspects of the independence of the judge entrenched in the Constitution is that, while administering justice, all judges have equal legal status, in the aspect that no different guarantees of the independence of the judge while administering justice (deciding cases) may be established. While administering justice, no judge is, nor may be subordinate to any other judge or to the President of any court (*inter alia* of the court where he works or of the court of a higher level or instance). On the other hand, the principle of the equal legal status of judges does not mean that the material and social guarantees of judges may not be differentiated under clear, *ex ante* known criteria, which are not related to the administration of justice while deciding cases (for example, under the term of a person's work as a judge). The principle of the equal legal status of judges which stems from the Constitution also may not be construed as not permitting to additionally pay the judges—the heads of courts (their deputies, heads of divisions, etc.) which implement additional functions for the carried out organisational work: supplementary work must be paid for additionally.

**III. The procedure for consideration of constitutional justice cases,** which is entrenched in the Law on the Constitutional Court and the Rules of the Constitutional Court also in some aspects shows the striving for securing the independence of the activity of the Constitutional Court.

Although there is not a provided possibility for citizens to apply to the Constitutional Court in Lithuania, a petition regarding the compliance of adopted legal acts with the Constitution and laws may be filed at the Constitutional Court by all courts of general jurisdiction and specialised courts, a group of not less than 1/5 of all the Members of the Seimas, the Seimas *in corpore*, the Government, the President of the Republic independently from other state institutions.

Article 19 of the Law on the Constitutional Court provides that the Constitutional Court shall collectively investigate cases and adopt rulings provided that not less than two-thirds of all the

justices of the Constitutional Court are participating. In other words, in Lithuania, the Constitutional Court considers cases *in corpore*, as a rule, with all justices participating. Decisions are passed by majority vote of at least half of the justices participating in the sitting, and, if it becomes necessary, the vote of the Chairman of the sitting is decisive. The case for a Constitutional Court hearing is prepared by the justice-rapporteur who is appointed by the President of the Court; as a rule, the justice-rapporteur conducts initial investigation of the received petition, however, the surname of the justice-rapporteur is not indicated in the decision adopted by the Constitutional Court. An adopted ruling of the Constitutional Court is signed by all justices regardless of whether a certain justice voted in favour or against the corresponding final act of the court, also regardless of whether he has expressed a dissenting opinion or not. The Constitutional Court has held that the legal regulation whereby it would be allowed that a certain justice, who is considering the case, not sign the publicly announced final act of the court, would not be constitutionally justified in any way.<sup>23</sup>

The Law on the Constitutional Court has entrenched the principles of activities of the Constitutional Court, *inter alia* publicity of the Court activity, by means of which one seeks to secure greater transparency of the Court activity and its openness to the public, and, at the same time, impartiality of the Court. The publicity of the Court activity determines the fact that information about the court procedure is accessible, it can be imparted and commented upon, therefore, the mass media play a big role in informing the public about the court activity. It is universally agreed that the judiciary, while being one of the branches of state power, may not be isolated from society which has the right to know how justice is administered. Decisions adopted by courts are related to various spheres of social life, therefore, it is natural that they stir many discussions and quite often receive criticism. However, the opinion formed by mass media and their influence should not make the courts hostages of such an opinion, whereas the expressed criticism may not become the negation of decisions adopted by the court. Rulings of the Constitutional Court often affect the interests of not only individual residents, but expectations of entire social groups, therefore, they are often at the centre of attention of mass media. More often than not, they also become the object of political discussions and assessment.<sup>24</sup> It is possible to mention, as examples, the Constitutional Court ruling of 9 December 1998 which recognised that the death penalty was in conflict with the Constitution (after this ruling had been adopted, the results of the public opinion poll showed unequivocally that most of the population disapproved of the position and decision of the Constitutional Court); the Constitutional Court conclusion of 31 March 2004 (which was already mentioned in this report) regarding the actions of the President of the Republic Rolandas Paksas, in which it was recognised that the then President of the Republic had committed gross violations of the Constitution, even though part of the public were actively supporting the President; as well as the Constitutional Court ruling of 13 November 2006 which virtually prohibited that individuals

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<sup>23</sup> The Constitutional Court ruling of 21 September 2006.

<sup>24</sup> Žilys J. Konstitucinis Teismas ir viešoji nuomonė [The Constitutional Court and Public Opinion] // Teisminė valdžia ir visuomenė [The Judiciary and Society]. Vilnius, 1999.

hold dual citizenship (citizenship of the Republic of Lithuania and of another state at the same time), although even today there is a widespread belief among the public that the Constitution permits it. One is also to mention the ruling of 20 March 2008, wherein the position of the Constitutional Court regarding the number of students of schools of higher education and their financing was set forth, which stirs discussions even at present. Thus, the Constitutional Court of the Republic of Lithuania has proved more than once that it is able to resist the pressure of the public opinion and to adopt decisions that not always coincide with the public opinion.

**Conclusions:**

1. In the Constitution of the Republic of Lithuania the principle of separation of powers is not entrenched directly, but is derived from the constitutional provisions in which the institutions executing the legislative, executive and judicial powers are enumerated. On the grounds of interpretation of the Constitution, as an integral act, this principle has been clearly formulated in the doctrine of the Constitutional Court, by emphasising that the institutions executing state power must be separated and sufficiently independent, but, alongside, there must be a balance among them.

2. The principle of independence of courts and judges, which is derived from the principle of separation of branches of state power, is inseparable from a democratic state under the rule of law. Independence of courts and judges is an essential condition in securing proper administration of justice. The constitutional guarantees of independence of courts and judges are designed to secure that courts and judges are independent from both the interference of other branches of state power, and from the influence of the parties to the case and that of public institutions and organisations.

3. In the jurisprudence of the Constitutional Court the conception of full-fledged judiciary is entrenched and a broad official constitution doctrine of independence of the judge and courts is formulated, wherein the independence of the judge and courts is defined not as a privilege, but as one of most important duties of the judge and a court.

4. The entirety of the guarantees securing independence of the judge and courts is to be assessed as an indivisible entirety of closely interrelated means, which include the procedural independence of courts, the organisational self-dependence of courts and their self-governance, financial and material-technical maintenance, the status of judges, inviolability of the term of powers, and the social (material) guarantees of the judge.