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THE EFFECTS OF DECISIONS BY THE CONSTITUTIONAL COURT

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By Mr. Kestutis LAPINSKAS

1. The realization and legal force of decisions adopted by institutions of constitutional supervision make a many-sided problem. First of all the problem can be tackled taking account of the model of constitutional supervision, that is, taking into account specific organizational forms of supervision. The American model, where courts of justice are in charge of constitutional supervision, apparently favours the realization of decisions according to general rules of realization of court decisions. In this case, we deal only with some peculiarities of acts of constitutional supervision, as compared with other legal acts.

Essentially different problems arise when we deal with decisions adopted by constitutional courts and their realization. As a matter of fact, even in this case I doubt whether we can talk about any unanimity or identity of problems. Suppose the decisions adopted by constitutional courts and their realization to a large extent depend on such forms of constitutional supervision as preliminary or *ex post facto*, concrete or abstract, as well as on the jurisdiction of constitutional courts, the way a particular country views the institution of constitutional supervision and the established legal traditions.

In this report, most of attention will be paid to special constitutional supervision, that is, to the problems of realization of decisions adopted by constitutional courts which are illustrated by and based on legal regulation and partly on the practice of the Constitutional Courts of the Republic of Lithuania and the Republic of Latvia.

2. According to the law, the Constitutional Court of the Republic of Lithuania collectively adopts 3 kinds of acts: rulings, conclusions and decisions. They are all generally often referred to as decisions. However, each kind of act has its own purpose, legal meaning and triggers off different legal consequences. From this point of view, the aforesaid acts may me grouped into 2 main classes: procedural documents - decisions, and the final acts - rulings and conclusions. Having investigated and settled a case in essence, the Constitutional Court passes a ruling. In some cases provided by the law, the final act of the Constitutional Court is called the conclusions, while decisions are adopted on various procedural questions which arise in the process of preparing a case and considering it in a court sitting.

A ruling as the final act is adopted having investigated a case on the compliance to the Constitution or legality of a disputed legal act (i.e. a law or other act of the Seimas, the President of the Republic, or a governmental act), while the conclusions as the final act is adopted by the Constitutional Court having investigated a case on an inquiry, when it is requested to express opinion on one of the following issues:

1) the violation of election laws during presidential elections or elections to the Seimas;

2) whether the President of the Republic of Lithuania’s health is not limiting his/her capacity to continue in office;

3) the conformity of international agreements of the Republic of Lithuania with the Constitution, and

4) the compliance with the Constitution of concrete actions of Seimas members or other State officers against whom impeachment proceedings have been instituted.

Thus, rulings and conclusions may be defined as the most important acts, since they are adopted only after a respective case has been considered. They express the will of the Constitutional Court, which is final and not subject to appeal. The will is obligatory to everybody, with the exception of conclusions which are always presented only to the party that had made an inquiry. By means of these acts the Constitutional Court implements its major function - executes constitutional justice.

3. The decisions of the Constitutional Court, as mentioned above, are usually procedural documents which establish significant procedural activities (to join two petitions into one case, to assign the case for hearing in the Court sitting, to postpone and renew investigation of a case on requests of parties to a case, etc.). Most often these acts are of single application, they establish succession of more important procedural activities and express the Court's will concerning requests of the parties. Such acts usually only state juridical facts, therefore normally no problems arise as to the execution of most of the acts, because the time of their adoption, coming into force and implementation coincides. However, the analysis and practice of application of the Law on the Constitutional Court of Lithuania show that not all procedural decisions of the Court are equal in their force. Apart from the aforesaid ordinary procedural decisions, another group of decisions is made up of decisions which in their meaning and legal consequences are nearly equal to the final acts. They are also worth discussing because of the fact that they often have their peculiar mechanism of coming into force and their effect. There are the following types of Constitutional Court acts:

1) A decision to refuse to investigate a petition or an inquiry. Such a decision is adopted only on the bases established in Articles 69 and 80 of the Law on the Constitutional Court (when the petition is submitted by a non-authorized subject, when the issue does not fall under the jurisdiction of the Constitutional Court, when the question raised has already been investigated or is being examined by the Constitutional Court, when the petition is grounded on non-legal motives). The decision must be motivated, its duplicate is presented to the petitioner. Such a decision according to its legal consequences is reckoned among the final acts: it puts an end to the preliminary investigation of respective material and after it the final and not subject to appeal decision is adopted. This means that the same subjects cannot address the Constitutional Court on the same issue and on the same motives.

2) A decision to dismiss initiated legal proceedings is also reckoned among the final acts. The grounds of its adoption may be of the same nature as in the first case; however, stages of proceedings are essentially different: during them decisions are adopted. In the first case, a request is refused to be investigated, that is, to prepare a case for court hearing; while in the second case, such a case has already been started to investigate. Apart from the aforesaid grounds for dismissing initiated legal proceedings, the law provides for yet another grounds -

the cancellation of a disputable legal act (part 4 of Article 69). It should be noted that so far in the practice of the Constitutional Court of the Republic of Lithuania this was the only grounds used to dismiss initiated legal proceedings. Attention should be paid to the fact that a decision to dismiss initiated proceedings in its inner structure can be very similar to the main final act - ruling: after the introductory section both contain the establishing, the holding and the resolutionary parts. The holding part, as usual, contains legal analysis of the disputed act (or part thereof), arguments and assessments of the Constitutional Court are set out herein. Thus the holding part of this kind of decision has a similar residual value for the practice of legal application and the doctrine of constitutional law to that of the holding part of the ruling of the Constitutional Court. However, the contents of the resolutionary parts are different: the resolutionary part of the ruling gives an answer to the question if a disputed act (or part thereof) is legal (i.e. whether it contradicts the Constitution (the law), or not), while the resolutionary part of the decision establishes the will of the Constitutional Court to dismiss initiated proceedings.

3) A decision to accept the motion of the President of the Republic or Seimas resolution which request to investigate if a legal act conforms with the Constitution. It should be noted that such a decision has a double nature: first of all it is regarded as an ordinary procedural act establishing the Court's will to start a case of constitutional justice based on the motion of the President of the Republic or Seimas resolution; secondly, it is an act of exclusive supplementary legal force, because on its grounds the provision concerning the suspension of a disputed act, established in part 4 Article 106 of the Constitution, comes into force. Therefore, the Law on the Constitutional Court establishes special rules for adoption of such decisions, and provides for special procedures for suspending a disputed act and the cancellation of the force of the decision. Namely, the Law on the Constitutional Court establishes that such motions of the President of the Republic and the Seimas are to be preliminary considered within three days and a decision has to be made in the Court hearing whether to accept the request for investigation in the Constitutional Court. In the cases when the Constitutional Court makes a decision to accept the request, the Chairman of the Constitutional Court has to give an official announcement about it either in the *official gazette* "Valstybes zinios" (*The News of the State*) or in a special publication of the Seimas, or in the press through the Lithuanian News Agency (ELTA). The communiqué must contain the exact title of the act in question, the date of its adoption, and that, in accordance with Article 106 of the Constitution, the validity of the act is suspended from the day of its official announcement until the ruling of the Constitutional Court concerning this case is announced. The validity of the Constitutional Court decision, in the part which stipulates the temporal suspension of a disputed act, is finished in two ways. First, if the Constitutional Court having investigated a case adopts a decision that a disputed act contradicts the Constitution, from the day of official announcement of the ruling the disputed legal act (or part thereof) practically loses its legal force as it cannot be applied in practice anymore. This means that on the same day the temporal suspension of that act expires. Secondly, in cases when the Constitutional Court having investigated a case adopts a decision that the disputed act is in compliance with the Constitution, the Chairman of the Constitutional Court immediately gives an official announcement about it in the aforesaid publications. In this announcement, the Chairperson must state the exact title of the act in question, the date of its adoption, the main point of the ruling of the Constitutional Court concerning this issue, the date of the adoption of the ruling, and that the validity of the suspended act shall be restored from the day that this ruling is announced.

It should be noted that during the first three years of the Constitutional Court of Lithuania work, the aforesaid mechanism of suspending disputed acts was not used. Only once, on 25 June 1996, the Seimas adopted a resolution to appeal to the Constitutional Court with the request to investigate if norms of two laws are in compliance with the Constitution.

4) A decision to impose penalties on officers or citizens (pursuant to Article 40 of the Law on the Constitutional Court). It is also the final and not subject to appeal act which is sent to the bailiff to be conducted.

5) A decision to correct a ruling. Pursuant to Article 58 of the Law on the Constitutional Court, the Constitutional Court having promulgated a ruling may, on its own initiative or at the request of the parties to the case, correct inaccuracies or obvious editor's mistakes present in the ruling providing they do not change the essence of the ruling. On account of this, the Constitutional Court adopts a corresponding decision which is sent and announced pursuant to the procedure established by this law. Thus such a decision becomes something like a constituent part of the ruling.

6) A decision to interpret Constitutional Court rulings. Constitutional Court rulings may be interpreted only by the Constitutional Court at the request of the parties to the case, other institutions or persons to whom it was sent, or on its own initiative. A decision on an interpretation of the Constitutional Court ruling is passed at the Constitutional Court hearing as a separate document; it is sent and announced pursuant to the procedure established by law. Such a decision is also treated as a constituent part of the ruling, therefore general rules of coming into force and application of rulings are applied to it.

7) A decision to review Constitutional Court rulings. Pursuant to the Law (Article 62), Constitutional Court rulings may be reviewed on its own initiative, if:

"1) new, vital circumstances turn up which were unknown to the Constitutional Court when the ruling was passed; or

2) the constitutional norm on which the ruling was based has changed."

If some of the aforesaid grounds occur, the Constitutional Court adopts a decision on reviewing a corresponding ruling and starts the investigation of the case *de novo*. A decision of the Constitutional Court concerning its ruling may also be reviewed if the ruling was not interpreted according to its actual content. This type of decisions differs from ordinary procedural decisions as on their grounds the validity of the final acts - rulings - is terminated. So far the Constitutional Court has not adopted such a decision.

4. Setting out to discuss the decisions of the Constitutional Court of Latvia and their legal force, a short review about the bases of legal regulation of all those issues is absolutely necessary. Meanwhile, we may speak about two levels of such legal regulation - constitutional and that of laws. Article 85 of the Constitution of the Republic of Latvia (5 June 1996 version) establishes the chosen model of constitutional justice - the Constitutional Court, the bases of its competence, and principal provisions of the order of its composition. Those short constitutional

provisions are elaborated in the Constitutional Court Law of the Republic of Latvia, which establishes that “the Constitutional Court shall hear cases pursuant to the Constitution and this Law only” (Paragraph 1, Article 1). The aforesaid Law also provides that work procedures of the Constitutional Court shall be set out in the Rules of the Constitutional Court which shall be adopted by an absolute majority vote of the entire total of the judges (Article 14). However, Article 26 of the Law reads that “the procedure for reviewing cases is provided for by this Law and the law on the procedures of the Constitutional Court.” We may judge about the reciprocity of the aforesaid Rules and the Law on the procedures from Paragraph 1 of the Transitional provisions of the Law: “Until the day when the Law on the procedures of the Constitutional court is enforced, the procedure for reviewing the cases shall be regulated by this Law and the Rules of the Constitutional Court.” It should be noted that at the time of the seminar, neither the Rules nor the aforesaid Law have been passed yet, therefore the issues of legal force of acts of the Constitutional Court of Latvia will be reviewed on the basis of constitutional provisions and of those of the Constitutional Court Law.

5. The main provisions concerning acts adopted by the Constitutional Court are formulated in the Constitutional Court Law. The law speaks of two forms of such acts - decisions and verdicts. While considering general issues, for example those about the classification of acts, for the sake of convenience all the acts will be referred to as Constitutional Court decisions.

According to the procedure of adoption, there may be distinguished one-person and collective decisions. One -person decisions, on behalf of the Constitutional Court, are adopted by the Chairman and judges of the Constitutional Court. The decision is adopted having carried out a preliminary investigation of a received request. Usually those are procedural acts which settle the fate of the materials submitted to the Court: to start preparing a judicial case, or to refuse to do so. Consequently corresponding acts, according to their contents, may be called positive or negative decisions. A positive decision is the grounds for carrying out other legal actions in the initiated proceedings, while a negative decision is regarded as the final decision on the request submitted to the Constitutional Court. However, the law gives a petitioner the right to appeal against a negative decision to the Constitutional Court within 2 weeks. So actually only such a negative decision, adopted by the Chairman or judges of the Constitutional court, is considered final that has not been appealed against (i.e. that has come into effect).

The decisions of the Constitutional Court Chairman to pass a case over to prepare for judicial investigation are reckoned among individual ones. It is a typical intermediate procedural decision which establishes the end of one stage of proceedings (preparation of a case for investigation), and produces legal preconditions to start another - that of judicial investigation. As compared to Lithuania, here such a procedural decision is adopted collectively by the Constitutional Court in a procedural sitting.

6. Collective Constitutional Court decisions are adopted collectively either by 3 judges or by all the judges of the Court (not less than 5 judges). According to the purpose and contents, collective decisions may be classified to procedural and final. In the Constitutional Court Law

of Latvia, the final act is called the verdict (they will be discussed later). While procedural collective acts are called decisions, and there are the following kinds of them:

1) to extend the term of preliminary investigation of the petition submitted to the Court to 2 months;

2) to extend the term of preparation of a case for judicial investigation to 2 months;

3) on appeal on adopted decision to refuse to investigate a case;

4) on holding a closed session of the Constitutional Court;

5) on the dismissal of legal proceedings.

Two of the aforesaid procedural decisions have features characteristic to a final act, i.e. they actually terminate further legal proceedings concerning the investigated issue. The first case relates to a complaint on individual decision to refuse to initiate legal proceedings. The submitted complaint is investigated collectively by 3 judges, who adopt one of two possible decisions: 1) to satisfy a complaint and to initiate a case, or 2) to reject a complaint. According to legal consequences, these collective decisions are equal to the aforesaid individual procedural decisions of judges. However, negative collective decisions are final and not subject to appeal.

The second decision is aptly called the closing of proceedings. These are cases when upon initiating legal proceedings there is no point in going on with it and closing by adopting a verdict. The cases are directly indicated in Article 29 of the Constitutional Court Law of the Republic of Latvia, namely: 1) upon a written request of the applicant; 2) if the disputed legal norm (act) is no longer in effect; 3) if the Constitutional Court finds that the decision to initiate the case does not comply with the provisions of this Law.

7. One of the main problems of realization of decisions adopted by institutions of constitutional supervision is the establishment of the beginning (moment) of invalidity of unconstitutional laws. Possible variants: 1) from the moment of recognition of a law as contradicting to the Constitution, i.e. since the Constitutional Court ruling has been promulgated in the Court; 2) having officially announced the ruling in the press, which is the date of its announcement (this is the case in Lithuania now); 3) from the day of the adoption of an unconstitutional law; 4) from the date set by the Constitutional Court. Each of these variants may be quite solidly motivated.

Professor M. Römer, basing himself on H. Kelsen's doctrine of constitutional supervision, draws a conclusion that the termination of validity of unconstitutional laws is possible only *pro futuro*. It is a distinctive feature of a constitutional court routine making the system more superior and advanced than the casual constitutional quasi-control. It is according to this system that unconstitutional laws are not laws and have no legal force from the very beginning (i.e. from their passing and coming into force). According to the Anglo-Saxon

system, unconstitutional laws are not laws at all and cannot be applied. However, it is doubtful whether such a conception increases the authority of the law and public trust in the law, strengthens law and order and legal discipline.

Meanwhile, a constitutional court routine with its validity of the law only *pro futuro* rouses confidence in the law and strengthens law and order, creates the feeling of being legally safe, and rouses respect to the existing legal system.

H. Kelsen even maintains that for the aforesaid reasons a constitutional court may not suspend the validity of unconstitutional laws at once but from a definite date in the future. Attention should also be paid to the fact that in this case quite a paradoxical situation is created: 1) corresponding laws (or parts thereof) are recognized as anti-constitutional by a court decision; 2) the same decision prolongs the validity of legal force of unconstitutional laws yet for some time; 3) this allows to create new legal consequences on the basis of recognized as unconstitutional laws. It is doubtful, however, whether such a situation is unquestioningly compatible with the conception of constitutional justice.

8. The main collective act of the Constitutional Court of Latvia is called the verdict. It is not a constitutional title since Article 85 of the Constitution of the Republic of Latvia, whose purpose is to establish constitutional grounds of the status of the Constitutional Court, contains not a single term “decision”; though it says “the Constitutional Court shall be empowered to declare laws and other normative acts or parts of same as null and void”. Of course, such an action of the Constitutional Court must have a specific form of legal expression, which may only be a particular Court decision in a specific case. The importance of the aforesaid provision manifests itself first of all in the fact that it establishes legal force of Constitutional Court decisions: these Court decisions may be the basis for recognizing disputed acts (or parts thereof) as having lost their legal force. This means that the corresponding Constitutional Court decisions are 1) final and not subject to appeal (they settle the question of constitutional legality of disputed legal acts, which can not and is not to be either denied or reviewed, neither a complementary confirmation of its force may be demanded); 2) entirely and clearly settles the fate of legal acts (or parts thereof) recognized as unconstitutional - by the Constitutional Court decision they are recognized as having lost their legal force. Therefore, institutions, that had adopted such acts, are relieved from technical troubles which involve taking care of cancellation of unconstitutional acts (or parts thereof) in the future. Taking account of the features mentioned above, we may speak about a special legal force of final decisions of the Constitutional Court of Latvia. On the other hand, this presents (or at least makes topical) the known theoretical problem concerning the participation of the Constitutional Court in legislation of laws or other legal acts, and threat which therefore arises to the principle of division of powers.

9. The verdict is adopted by the majority vote of the judges after the case of constitutional jurisdiction has been considered according to all the procedural rules at the court session. The Constitutional Court Law of Latvia requires that the verdict should be grounded and motivated, that is, it must indicate the following things: the disputed legal norm (act); circumstances established by the Constitutional Court; arguments and proof justifying the

conclusions of the Constitutional Court; arguments and proof by which the Constitutional Court rejects this or other proof; provision of the Constitution or other law pursuant to which the Constitutional Court considered whether the disputed legal norm (act) complies with the legal norm of higher force; ruling of the Constitutional Court whether or not the disputed legal norm (act) complies with the legal norm of higher force.

The Law strictly states that the verdict of the Constitutional Court is final and may not be appealed. It shall come into legal effect at the time of announcement, and it shall be binding on all state and municipal institutions, offices and officials, including the courts, also natural and juridical persons. The time of the verdict announcing is thus very important as it is this moment that causes respective legal consequences. According to the Constitutional Court Law of the Republic of Latvia, the time of verdict announcing should be considered the time of public announcement of the verdict at the Court session (see Articles 27 - 30). This shall be done not later than 15 days after the session of the Constitutional Court. Having announced the verdict, its duplicate shall be forwarded to the parties to the case not later than three days, and shall be published in the press not later than five days after the verdict is announced.

Legal consequences of the Constitutional Court verdict generally, as it has already been mentioned above, are defined in the Constitution, and they are specified in the Constitutional Court Law which establishes that any legal norm (act) which the Constitutional Court has determined as incompatible with the legal norm of higher force shall be considered invalid as of the date announcing the verdict of the Constitutional Court, unless the Constitutional Court has ruled otherwise; moreover, if the Constitutional Court has recognized any international agreement signed or entered into by Latvia as incompatible with the Constitution, the Cabinet of Ministers is immediately obliged to see that the agreement is amended, denounced, suspended or the accession to that agreement is recalled (Paragraphs 3 - 4, Article 32).

10. Although we may come across flaws of legal regulation in the legal system, most often new laws substitute for previous laws that were valid before. Usually it is indicated in a new law that from the day of its coming into force the one that was valid before loses its validity. Therefore, in practice a question often arises whether in cases when a law is recognized as unconstitutional the validity of the act that was in force before should be automatically restored. Such reasoning is mostly based on practical reasons - so that there would be no vacuum in the legal system. A formal argument is also presented: having recognized a new law as unconstitutional, the reference concerning the substitution of a previous law with a new one also loses its legal force. Thus it is essentially suggested in such cases to return to the state that had existed till the passing of the unconstitutional law. However, such arguments are hardly acceptable thought hey do have some common sense. First this would mean that a constitutional court decision is given retroactive validity. Secondly, in this case a constitutional court practically would start performing functions of the legislature, as removal of flaws from legislation is an exclusive prerogative of the legislator.

11. The question of retroactive validity of Constitutional Court rulings is solved in different ways. For example in Italy, once a decision on unconstitutionality of laws or norms

thereof has been promulgated, from the day of the promulgation of the decision the law (norm) is prohibited to be applied not only to the future relations but also to those relations which were formed before the announcement of the act as unconstitutional. In order to prevent retroactive validity, the Constitutional Court of Italy in its decisions on the cancellation of acts directly indicates this (i.e. restricts retroactive validity or indicates that an act is cancelled *pro futuro*). In Austria, pursuant to the law, restricted retroactive validity is applied, i.e. such validity is applied to a suspended case in the court which appealed with a respective claim to the Constitutional Court. In other cases, the cancelled laws (norms) are not valid only *pro futuro*, and the act that was recognized as unconstitutional is applied to the relations that arise till the adoption of a decision. Perhaps owing to such a paradoxical situation, in 1976 the Constitutional Court of Austria was granted the right to establish either retroactive or *pro futuro* validity of laws (norms) at its own discretion. The Constitutional Court of West Germany also has some freedom in establishing validity of their laws in time. Meanwhile, retroactive validity of Constitutional Court decisions of Turkey is not provided for. As a matter of fact, H. Kelsen had yet provided for a case when a constitutional court decision should be retroactive: namely, when the case of unconstitutionality is filed by a court of justice. In this case, a constitutional court decision, suspended in a judicial case, should be applied retroactively because otherwise it would be impossible to finish the suspended case (i.e. in this case, a judicial case is suspended in order to adopt a constitutional court decision on a doubtful law (or any other legal act); the adopted constitutional court decision is the grounds for renewing investigation of the case and adopting a decision taking account of the constitutional court decision).

The law of Lithuania does not directly mention retroactive validity of acts of the Constitutional Court, but it is possible to discern this indirectly. Article 110 of the Constitution establishes: “In cases when there are grounds to believe that the law or other legal act applicable in a certain case contradicts the Constitution, the judge shall suspend the investigation and shall appeal to the Constitutional Court to decide whether the law or other legal act in question complies with the Constitution.” Only afterwards, when the Constitutional Court adopts a decision on a disputed act, court of justice renews the investigation of the suspended case and settles it taking into consideration the Constitutional Court ruling that has already been passed. Thus in this case, the ruling passed by the Constitutional Court undoubtedly is of retroactive validity. It should be noted, however, that in some rulings of the Constitutional Court of the Republic of Lithuania it is directly said that a ruling on an act that was recognized as unconstitutional has no retroactive validity. Thus the Constitutional Court practice concerning retroactive validity of acts adopted by the Court should be regarded as dualistic.

12. The Constitutional Court decision on complying with a request, i.e. recognition of a disputed act (or part thereof) as unconstitutional, practically means that such an act cannot be applied in practice. However, a formal cancellation of acts recognized as unconstitutional, i.e. their removal from the legal system, varies from country to country. For example in Austria, they speak about *abrogation* of such an act, in Spain and Germany about *invalidity*, in Italy about *annulment* of an unconstitutional act, in Latvia - to declare acts as *null and void* (that is, such are the terms used in constitutional court rulings).

Pursuant to the Lithuanian law, the Constitutional Court having finished the investigation of a case concerning conformity of a legal act with the Constitution, passes one of

the following rulings:

1) to recognize that a legal act is in compliance with the Constitution or the law;

2) to recognize that a legal act contradicts the Constitution or the law.

Thus the resolutionary part of the Constitutional Court ruling mainly only states the fact and does not indicate the further fate of the act recognized as unconstitutional (or illegal), i.e. the ways of its annulment, cancellation or removal from the legal system.

It should be noted that the consequences of Constitutional Court rulings on recognition of legal acts as unconstitutional are defined in Article 107 of the Constitution which reads: "Law (or parts thereof) of the Republic of Lithuania or any other acts (or parts thereof) of the Seimas, acts of the President of the Republic of Lithuania, and acts (or parts thereof) of the Government may not be applied from the day of official promulgation of the decision of the Constitutional Court that the act in question (or part thereof) is inconsistent with the Constitution of the Republic of Lithuania." The same consequences occur when the Constitutional Court adopts a decision that acts of the President of the Republic of Lithuania, or acts (or parts thereof) of the Government contradict the law.

The aforesaid constitutional provisions are yet more specified in the Law on the Constitutional Court, where it is established that rulings passed by the Constitutional Court have the force of law and are obligatory to all the authorities, courts, enterprises, institutions and organizations, as well as all the officials and citizens.

The aforesaid way is the means to achieve the most important aim: the act, recognized as unconstitutional (illegal), is being "paralysed", it cannot be applied in practice. At the same time the necessary distance among state powers is retained. Thus a court avoids participation in legislation of laws and other legal acts. It is kept to the presumption that a formal cancellation of acts, recognized as unconstitutional, is the right and duty of the legislator and respective institutions of the executive. Such a provision is partly established in Article 72 of the Law on the Constitutional Court: "All governmental institutions as well as their officials must revoke executive acts or provisions thereof which they have adopted and which are based on an act which has been recognized as unconstitutional." Such practice is being formed in the Government and partly in the Seimas.

Moreover, the Law on the Constitutional Court establishes that the decisions based on legal acts which have been recognized as contradicting the Constitution or the law should not be implemented unless they had been implemented until a respective Constitutional Court ruling came into force.

The force of the Constitutional Court ruling to recognize legal acts or parts thereof as unconstitutional may not be overcome by adopting the same legal acts or parts thereof.

13. Obligatory execution of constitutional acts is provided for in some countries. For example in Austria, though it is not a pervasive practice, obligatory execution is carried out by courts of justice (concerning claims on financial affairs) or by the Federal President, who is obligated to do this under the Constitution (when the Constitutional Court addresses the President with a corresponding requirement, the President through bodies under him, including the military forces, has to ensure execution of the Court's decisions). In Austria, however, the bulk of the Constitutional Court decisions (e.g. those on distribution of competence, on legality of legal acts, on interpretation of laws, etc.) are of declarative nature (they become obligatory after they have been promulgated), therefore obligatory execution is not applied to them.

In Lithuania only one kind of Constitutional Court acts may be subject to obligatory execution - Constitutional Court decisions on imposing penalties on officers and citizens. The decisions are sent to the bailiff of a court of justice to be executed. In the practice of the Constitutional Court of Lithuania no such decisions have been adopted as yet. It is worth noting that the Constitutional Court of Lithuania almost exceptionally considers cases on compliance of legal acts with the Constitution and laws. So, rulings in these judicial cases are declarative, their universal obligatoriness is guaranteed by the Constitution and the Law on the Constitutional Court. As a matter of fact, no serious problems concerning execution of Constitutional Court rulings (by this refusal to execute them is meant) have occurred in Lithuania.

According to the Constitution of the Republic of Lithuania, Constitutional Court rulings on issues which are ascribed by the Constitution to the competence of the Court are final and not subject to appeal. First this applies to the final acts - rulings which undoubtedly are of universally imperative nature and may not be reviewed or changed by anybody else but the Constitutional Court whose competence is also restricted by the Law.

14. Another kind of the final acts should be discussed separately, they are the conclusions of the Constitutional Court. The aforesaid general rule also applies to them, namely, they are final and not subject to appeal. Nevertheless, after this rule part 3 of Article 107 of the Constitution establishes that: "On the basis of the conclusions of the Constitutional Court, the Seimas shall have a final decision on the issues set forth in part 3 of Article 105 of the Constitution." First of all it is important to pay attention to the fact that issues listed in part 3 of Article 105 of the Constitution are ascribed to joint competence of the Constitutional Court and the Seimas, which means that these issues are to be tackled by both institutions. Moreover, a specific form of activities and power limits are established for each institution: the Constitutional Court presents conclusions on the aforesaid issues (when requested by the subject in power - the Seimas or the President of the Republic of Lithuania), while the right of the final decision belongs solely to the Seimas. Therefore in this case a rule, that the conclusions of the Constitutional Court are final and may not be subject to appeal, is of relative nature and they still can be subject to discussions as there are no legal guarantees that a final decision on a specific issue will invariably coincide with the conclusions of the Constitutional Court. In this case, the aforesaid rule at best means that, when the Seimas adopts a different final decision, the conclusions of the Constitutional Court do not change and may not be cancelled because of that. Of course, such situations are not desired, because this would mean some sort of conflict (or its beginning) among powers. It can only be added that from this point of view legal force and

meaning of the conclusions of the Constitutional Court undoubtedly differ from Constitutional Court rulings.

15. To conclude this report, I would like to shortly summarize the issue of the realization of the final decision of the Constitutional Court of Latvia - the verdict. First, the time of coming into effect of the Constitutional Court verdict - from the moment of its oral announcement at the Court session - presents some doubts. Compare it with the determination of the time of coming into force of a passed law: “If no other term is fixed, the laws shall take effect fourteen days after their promulgation” (Article 69 of the Constitution). Evidently, the time of coming into force of the Constitutional Court verdict is essentially different from that of the law and their amendments, and it is doubtful whether this might be regarded as a positive thing.

Second, the aforesaid drawback is at least partly removed by the norm of the Constitutional Court Law which gives the Constitutional Court a large discretionary power to determine the time of coming into force of the verdict.

Such vast rights of the Constitutional Court allow the presumption that the Constitutional Court when necessary will set a different than defined in the Law time of coming into force of the verdict. In this case, one of the main principles of the rule of law should be followed, namely, that only promulgated laws are in effect (enlarging this postulate to cover Constitutional Court decisions). Of course, the aforesaid discretionary right enables the Constitutional Court to treat the issues of retroactive validity of laws (and other legal acts) in a much freer and wider way. However, this may cause additional problems in the activities of the Constitutional Court.

Thirdly, the Constitutional Court Law mentions the possibility to review cases (Article 26), but those issues are not regulated in a wider way. It involves guesswork to tell whether such a possibility to review cases relates to the provided double work form of the Court: some cases are considered collectively by three judges, others - by the entire total of the judges. Nevertheless, in any case reviewing of a case means that the verdict adopted before should be recalled or that its groundness be reviewed. At the same time the legal principle, which states that “the verdict of the Constitutional Court is final and may not be appealed”, based on constitutional norms becomes problematic.