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REPORT

**THE ORGANISATION OF WORK OF LAW CLERKS AS SUPPORT
FOR DECISION-MAKING BY CONSTITUTIONAL COURT JUDGES**

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Dear colleagues,

I represent the Constitutional Court of the Republic of Lithuania.

First, I would like to say a few words about our Constitutional Court, i.e. to present its short characteristic, and then continue with our chosen topic and tell about the way how the servants of the Constitutional Court of the Republic of Lithuania assist justices in preparing cases for judicial hearing.

The Constitutional Court of the Republic of Lithuania is comprised of 9 justices, who are appointed by our Parliament for the period of 9 years. The competence of our Court is not broad. It investigates cases related to the compliance of laws and other acts of the Parliament with the Constitution, as well as the compliance of acts of the President of the Republic and the Government with the Constitution and laws. The form of constitutional supervision is passive. The Constitutional Court investigates cases only if it receives petitions requesting to investigate as to whether a legal act is in compliance with the Constitution, and such petitions may be submitted only by a limited number of persons: the Parliament, the President of the Republic, the Government, a group of members of the Parliament comprising at least 1/5 of all members thereof, and courts.

The majority of cases are submitted by courts of general jurisdiction and administrative courts, this number amounts to more than 2/3. We receive a fair number of cases from groups of members of the Parliament. The Parliament itself, the President of the Republic and the Government very seldom apply to the Constitutional Court.

We don't have a constitutional complaint. However, it was established in our Constitution that every person, whose constitutional rights or freedoms were violated, has the right to apply to court. After investigating such petitions, courts quite often suspend hearing of the cases and adopt rulings wherein they request the Constitutional Court to investigate as to whether legal acts adopted by the Parliament, the President of the Republic or the Government are not in conflict with the Constitution. This may be the reason why the majority of cases reach the Constitutional Court from the courts of general jurisdiction and administrative courts (we have no other specialised courts in Lithuania).

I can say that we receive quite a number of cases. At the moment we have 74 petitions that are not investigated yet. Since all petitions at our court are heard in full composition, therefore it takes at least one and a half year to investigate all the received petitions. The Constitutional Court is worried about the long period of case investigation. For this reason we are criticised by members of the Parliament and mass media.

In order to assist the justices to shorten the terms of investigation of the cases we increase the number of employees of the court. Recently we have established the Law Department, the main function of which is to prepare cases for the judicial hearing, i.e. to assist justices in investigating the received petitions.

The servants who work at our court comprise the apparatus of the Constitutional Court. The legal status of this apparatus is defined by the Law on the Constitutional Court in one sentence: "The Constitutional Court shall have an apparatus. Its structure and statute shall be confirmed by the Constitutional Court". Today the apparatus is comprised of the following structural units:

The group of assistants to justices;
The President's Secretariat;
The Law Department and the library as its part;
The Department of Codification and Computer Technologies;
The Finance Department;
The General Department;
The Economy Department.

The work of all servants of the Constitutional Court is headed by the Chancellor of the Court. He is the head of the apparatus of the Court. His legal status, rights and duties are established by the Law on the Constitutional Court, the Rules of the Apparatus and the Law on Public Service.

The Law on Public Service grants many rights to the Chancellor. He appoints and dismisses servants of the Constitutional Court. I should add that career public servants are appointed to the duties only upon winning a competition. However, the commission of the competition is appointed also by the Chancellor and, most often, is presided over by him.

All the servants of the court assist justices in their work. This is their mission. The General Department registers the received petitions, makes their copies, makes copies and delivers rulings and decisions of the Constitutional Court, the Economy Department ensures order of work, etc., while legal work is done, i.e. assistance to the justices in preparation of cases for the court hearings, as well as drafting rulings or decisions is rendered by the assistants to the justices and the Law Department.

After it is received, the petition wherein one requests to investigate as to whether a legal act is in compliance with the Constitution or a law is handed over to the assistant to the President of the Constitutional Court. The latter must draft an ordinance of the President of the Court, in which the President of the Court commissions one of the justices to conduct the preliminary investigation and necessary preparatory actions.

Preliminary investigation is conducted by a justice. He/she is assisted by an assistant to the justice, who reports to the justice whether the petition is in compliance with the requirements of the Law on the Constitutional Court, namely:

Whether the petition was submitted by an institution or a person, who has the right to apply to the Constitutional Court;
Whether the petition falls within jurisdiction of the Constitutional Court;
Whether the compliance of the indicated in the petition legal act has not been investigated at the Constitutional Court and whether a ruling of the Constitutional Court on this issue has not been issued;
Whether there has not been a case investigated on the same matter;
Whether the petition is grounded on legal arguments.

In the course of preliminary investigation the assistant to the justice also verifies whether the petition contains: the addressee, the name and address of the petitioner, the data about the representative of the petitioner and his powers (save the cases when representation is made *ex officio*), the title and address of the state institution which adopted the disputed legal act, the norms of the Constitution and the Law on the Constitutional Court which grant the right to apply to the Constitutional Court with a petition, as well as other requirements of the law, which one has to follow in the course of filing a petition.

If a petition is in line with the specified requirements, a note is drawn up, which is submitted to the President of the Constitutional Court. He issues two ordinances, which are prepared by the assistant to the President of the Court: 1) Ordinance on accepting the case for investigation. This ordinance must be published in the official gazette "Valstybės žinios" (this is an official publication in which all official legal acts are published). The assistant to the President of the Constitutional Court takes care that the said ordinance is published in "Valstybės žinios"; 2) Ordinance by which the President of the Constitutional Court commissions one of the justices (usually the one who conducted the preliminary investigation) to prepare the case to the court hearing.

When preparing the case for judicial hearing, the assistant to the justice prepares, under the leadership of the justice, all the necessary correspondence, i.e. receives written explanations of the party concerned, conclusions of experts or statements concerning the opinion. Upon the commission of the justice, he/she drafts documents on expertise assignment, receiving written and material evidence, assists the justice in interviewing the petitioner or its representative concerning the essence of the requests, the party concerned or its representative about its counter-arguments and available evidence, he/she helps to question the witnesses, as well as experts, and submits proposals whom to summon to the judicial hearing.

However, the aforementioned actions do not constitute the major work of the assistant to the justice. His/her main task is to assist the justice in preparing the material needed in order to solve the case and prepare a draft of a ruling (or conclusion). This is huge and very precise work. Usually, having taken into account the scope of work, a group of three-four employees (assistant to the justice and specialists of the Law Department) is formed for preparation of each case. This group must prepare for the court the following material:

1. First. Historic review of the topic at issue.

Such review is needed in order to make the justices to understand and perceive the essence of the topic better. For example, in May of this year our court investigated the petition of a group of members of the Seimas as to whether some articles of the Law on Hunting were not in conflict with the Constitution of the Republic of Lithuania.

Hunting is quite a specific issue. Not all people are engaged in hunting, not all know details about it, however, everybody is interested in its due organisation as hunting takes place in forests and majority of people makes use of forests, i.e. visits them.

A group of specialists, which prepared this issue, drafted a detailed statement in which it indicated, how many forests there are in Lithuania, what is their area, how big is the share of state-owned forests and forests administered under the right of private ownership, and what is the legal regulation of hunting in these forests. What was it like in the first code of laws of the State of Lithuania in 1468, what was it like in Lithuania under the tsarist Russian power prior to the First World War, what was it like in independent Lithuania during the period from 1918 till 1940 (between wars), and what it is like in Lithuania of today. It turned out that in the course of history the legal regulation of relations of hunting and those linked therewith was very diverse and interesting.

2. Second. Specialists of the apparatus of the Constitutional Court, when preparing the material for judicial hearing, must find out the political and the political science aspect of the topic at issue. It is established in the Law on the Constitutional Court that the Constitutional Court is a judicial institution and that it investigates the received petitions only on the basis of

the Constitution and laws. Petitions, if they are based not on the legal reasoning, are not examined at the Constitutional Court. Still, the Constitutional Court quite often has to decide political disputes. But the point is that the Constitutional Court decides such disputes by legal means. The Constitutional Court had to make a conclusion in an impeachment procedure whether the President of the Republic did not violate the Constitution and the oath of the President of the Republic, it had to decide whether the decree of the President of the Republic by which by way of exception he granted Lithuanian citizenship to Jurij Borisov was not in conflict with the Constitution and the Law on Citizenship, as well as whether the Central Electoral Commission did not violate laws when it approved the results of Seimas' elections, and many other issues that are closely related to politics.

3. Third. Every time the material for a case is being prepared, all legal acts on particular topic, both effective and no longer effective (already annulled), are examined. Sometimes there are many such acts—several acts or even several dozens of acts. After the examination of these acts the detailed information is submitted to the justices.

4. Forth. Sometimes one has to search for legal acts related to the topic at issue of other countries and compare the legal regulation existing in the State of Lithuania with those existing in other states. When deciding the legitimacy of granting the citizenship to Jurij Borisov by way of exception, one had to study laws on citizenship of many countries.

Quite often we take account of the way how one or another issue was solved by constitutional courts of other countries. We especially tend to gather experience when we investigate issues of restitution of private ownership, relations of public service and legal relations linked therewith, granting and payment of pensions, relations of municipal councils with executive bodies, the status and powers of members of the Seimas, and some other issues.

In the most difficult issues the Constitutional Court involves not only its employees, but specialists of other institutions as well. Most often we address experts in law and scientists for their opinion. The group of servants of the court which assists the justices in preparing the case summarises the opinions of these specialists, prepares their abstracts and submits them to the justices.

A very important unit of our apparatus is the library. We are grateful to the constitutional courts of many countries, and, first of all, the Courts of Germany, Poland, and Russia, which often supported us with legal literature. Due to their assistance we have all rulings of the above-mentioned constitutional courts and a lot of other literature about their jurisprudence.

For each case the library searches for legal and other literature on the specified topic, prepares a list of literature which is important to a particular case, submits books, articles or their extracts to the group that prepares the case and the justices. Our library has a computer connection to the central national library, which has in its funds more than 7 million publications, therefore, it may submit any literature, i.e. not only the literature which is stored in our library, but also books and periodicals stored in the funds of the central national library.

The aforementioned work takes place every day in the course of the preparation of any case. In addition, the Law Department performs other legal work that is needed not only for a particular case, but to the activity of the whole Constitutional Court as well. This department:

Upon commission of the justices prepares review and summaries of scientific literature and legal practice, which are needed in order to prepare cases for judicial hearing and perform other functions of the Constitutional Court;

Makes analyses and summaries of rulings, decisions and conclusions of the Constitutional Court;

Makes reviews of rulings of constitutional courts of other countries, as well as the European Court of Human Rights and the European Court of Justice;

Accumulates and systematizes general material, legal acts, literature reviews, judicial practice of constitutional courts of other countries, as well as the European Court of Human Rights and the European Court of Justice, which was collected while preparing the case for judicial hearing;

Makes reviews of jurisprudence of a particular constitutional court (most often they are related to mutual visits of justices of that court or our justices).

The Director of the Law Department heads the work of employees of the department and guides the activity of department specialists and assistants to the justices when they assist justices in preparation of cases.

I have already mentioned that in the apparatus of our court we have the Department of Codification and Computer Technologies. It supplies the justices of the Constitutional Court and employees of the apparatus with legal and other information when purchasing and using computer and telecommunication equipment, software, when developing databases, as well as accumulating and systematizing information therein. This department also codifies laws and normative acts of the Republic of Lithuania, as well as rulings and other documents of the Constitutional Court.

The apparatus of the Constitutional Court is in generally headed by the President of the Constitutional Court, and directly—by the Chancellor of the Constitutional Court, who is subordinate to the President of the Constitutional Court. The Chancellor of the Constitutional Court heads the apparatus of the Constitutional Court, when the latter renders scientific and organisational assistant to the justices, and organises the work of the apparatus. The activity of the apparatus of the Constitutional Court is organised so that it assists the President of the Constitutional Court and the justices in investigating judicial cases and performing other functions of the Constitutional Court in the best way. The Chancellor of the Constitutional Court controls that orders and ordinances of the President and the Chancellor of the Constitutional Court, as well as instructions of the justices are performed in due time and manner. He coordinates the work of units of the apparatus, when they provide assistance to the justices in preparation of cases for judicial hearings, making reviews, analyses and summaries of rulings and decisions of the Constitutional Court, submitting information about the activities and important rulings of constitutional courts of other countries, last scientific publications and articles, new and pioneering ideas and theories of constitutional jurisprudence.

In conclusion of my short presentation, I would like to express my gratitude to the organisers of this conference for the possibility to take part in this well-arranged event—Mr. Jenez Čebulj, the President of the Constitutional Court of Slovenia, and Ms. Jadranka Sovdat, the Secretary General. Moreover, this is also a nice occasion to send regards of the Constitutional Court of the Republic of Lithuania to Mr. Gianni Buquicchio, the Secretary

General of the Venice Commission and Ms. Caroline Martin. We always feel their constant care and support to constitutional courts.

Thank you for the attention.