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REMOVAL OF THE PRESIDENT OF THE REPUBLIC FROM OFFICE: SOME THEORETICAL ASPECTS OF THE CONSTITUTIONAL DELICT

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Abstract. *Under Article 74 of the Constitution, for gross violation of the Constitution or breach of oath, or if it transpires that a crime has been committed, the President of the Republic may be removed from office under procedure for impeachment proceedings. In the article the content of the constitutional delict is analysed. The President of the Republic may be brought to constitutional responsibility only for the actions which he committed while in office of the President of the Republic. The President of the Republic may be removed from office not for any violation of the Constitution, but only for gross violation thereof. While implementing the powers established to him in the Constitution and laws, the President of the Republic may not breach the oath. Under Article 74 of the Constitution, the President of the Republic may be removed from office "if it transpires that a crime has been committed" – this provision means that the Constitution provides for the right of the Seimas to remove the President of the Republic from office in the absence of a court judgement recognising that the President of the Republic is guilty of commission of a crime. The Constitution commissions only the Constitutional Court to establish the fact of violation of the Constitution – whether there has been a gross violation of the Constitution and breach of oath by actions of the person. The Seimas may not change or question the conclusion of the Constitutional Court. On the grounds of the conclusion of the Constitutional Court that the actions of the President of*

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the Republic are in conflict with the Constitution, it is only the Seimas that decides whether to remove the President of the Republic from office. The removal of the President of the Republic from office under procedure of impeachment proceedings due to a suspicion that the crime has been committed is not binding upon a court of general jurisdiction which considers the criminal case.

***Keywords**: President of the Republic, constitutional delict, removal from office, impeachment proceedings, conclusion of the Constitutional Court.*

Introduction

One of the grounds of expiration of powers of the President of the Republic is his removal from office under procedure for impeachment proceedings. Under Article 74 of the Constitution, for gross violation of the Constitution or breach of oath, or if it transpires that a crime has been committed, the President of the Republic may be removed from office. It is also established in the Constitution that it is only the Seimas that may remove the President of the Republic from office, that this is done under procedure for impeachment proceedings which is established in the Statute of the Seimas, and that the President of the Republic may be removed from office when not less than 3/5 of all Members of the Seimas vote for this. Under Item 4 of Paragraph 3 of Article 105 of the Constitution, the Constitutional Court shall submit a conclusion, whether concrete actions of Members of the Seimas and state officials against whom an impeachment case has been instituted are in conflict with the Constitution. The institute of impeachment is a way of public democratic control of the President of the Republic and other state officials specified in the Constitution and of their responsibility before society, including *inter alia* a possibility to remove them from the office held provided they do not fulfil their obligation to follow only the Constitution and law, if they raise their personal or group interests above those of society, if they discredit, by their actions, state power.[1] The removal of the President of the Republic from office is one of the elements of the principle of separation of powers entrenched in the Constitution and one of the elements of the system of "checks and balances". The possibility to remove the President of the Republic from office according to the procedure for impeachment proceedings is entrenched in the Lithuanian constitutional system for the first time. Violation of the Constitution, as well as breach of oath and commission of a crime, is violation of law, therefore, establishment of *the content of a constitutional delict* is important. An analysis of the elements of the constitutional delict allows to highlight some theoretical (and also debatable) aspects of the institute of impeachment, which have not received much

1 Ruling of the Constitutional Court "On the compliance of Article 1-1 (wording of 4 May 2004) and Paragraph 2 (wording of 4 May 2004) of Article 2 of the Republic of Lithuania Law on Presidential Elections with the Constitution of the Republic of Lithuania" of 25 May 2004. *Official Gazette.* 2004, No. 85-3094.

attention by researchers, and helps to better understand the constitutional content of the institute of impeachment.

1. The President of the Republic as a Subject of Constitutional Liability

The constitutional liability of the President of the Republic is one of the types of legal liability, therefore, general features of legal liability are characteristic of constitutional liability. On the other hand, constitutional liability is a special type of legal liability, it has some peculiarities making it different from other types of legal liability. These peculiarities are determined by the character of the relations regulated by constitutional law, the methods of regulation of constitutional law and the specific sanctions. The constitutional liability of the President of the Republic – removal of the President of the Republic from office – is different from other legal liability because constitutional liability: 1) is applied to a special subject – the President of the Republic; 2) is applied only when the grounds established in the Constitution are present; 3) is applied according to a special procedure; 4) special sanctions are applied.[2]

Violation of the Constitution, as well as breach of oath and commission of a crime, is violation of law, therefore, establishment of *the content of a constitutional delict* is important. As a rule, a deed (action, failure to act) of a special subject (in this case – the President of the Republic), which is contrary to the Constitution (incompatible with the Constitution), and for which a special constitutional sanction – removal from office – is applied, is regarded as a constitutional delict. If we try to single out the elements of the constitutional delict according to the general elements of a violation of law, which are recognised in the legal theory, we can assert that *the object* of the constitutional delict is the values entrenched in the Constitution, which are reflected by constitutional norms and principles; the *objective* part of the delict is a deed (action or failure to act) contrary to (incompatible with) the Constitution; the President of the Republic is *the subject* of the delict; *the subjective part* of the delict is guilt of the President of the Republic as his psychological relation with the deed contrary to (incompatible with) the Constitution and its consequences.

The legal subjectivity of the President of the Republic begins from the beginning of his office, thus, from the moment when the President of the Republic takes the oath (Par-

2 In the legal literature there are also other opinions as regards the fact what specific-typical features are characteristic of constitutional liability. For instance, V. Bacevičius writes that "the following is most often attributed to the specific features: a) the duty entrenched in the norm of constitutional law to be responsible for the improper behaviour provided in it, b) the right of an authorised institution to apply the sanction". The author also points out that "it is expedient to differentiate among these features of constitutional legal liability: 1) state coercion or other coercion equalled to it; 2) the committed constitutional delict; 3) application of unwanted measures (sanctions) to the subject of the constitutional delict; 4) special procedure for the application, which is implemented by an authorised institution". See Bacevičius, V. Apkaltos institutas ir konstitucinė atsakomybė: probleminiai aspektai. [Institute of Impeachment and Constitutional Liability: Problematic Aspects]. *Jurisprudencija*. 2008, 9(111): 95.

agraph 1 of Article 82 of the Constitution). It is precisely from the moment of taking the oath that the person elected the President of the Republic acquires all rights and duties, as well as the guarantees of activities of the President of the Republic. The special liability of the President of the Republic provided for in the Constitution is one of the most important elements showing that the constitutional legal status of the President of the Republic is a special one. Thus, the constitutional liability – removal from office – may be applied from the moment when the President of the Republic took office. As long as the person elected the President of the Republic has not taken office (has not taken the oath of the President of the Republic), he may not be held constitutionally liable – he may not be removed from office under procedure for impeachment proceedings.

The constitutional provision "*The President of the Republic may be removed from office"* means that the President of the Republic may be removed from office only from the deed done *while in office of the President of the Republic.* The specified constitutional provision prohibits to hold the President of the Republic constitutionally liable and to remove him from office for the deeds done by him before he took the oath of the President of the Republic. It means that all legal disputes, *inter alia* regarding the fact whether the person has been lawfully elected the President of the Republic must end before the oath of the President of the Republic is taken. The indicated constitutional provision also means that the person elected the President of the Republic for the second term of office may not be held constitutionally liable for a deed done by him during his first term of office as the President of the Republic. The President of the Republic elected for the second term of office may be held constitutionally liable only for a deed done during this (new) term of office.

The Constitution does not and cannot contain any list of concrete constitutional delicts. The requirement of general nature is entrenched in the Constitution: the President of the Republic must perform his duties in the manner so that he would not violate (grossly) the Constitution, would not breach the oath, and also the President of the Republic may not commit a crime. It is possible to assert that the Constitution has established a certain model of implementation of the powers of the President of the Republic, certain rules and standards the violation of which is prohibited. If the President of the Republic does not perform the duties established to him in the Constitution and laws, if he performs his duties in an inappropriate manner, if he disregards the standards of his activity and a certain mode of conduct entrenched in the Constitution and laws, i.e. if he grossly violates the Constitution, breaches the oath, also, if it transpires that the President of the Republic has committed a crime – for this he can be removed from office under procedure for impeachment proceedings.

2. What is a Gross violation of the Constitution?

One of the grounds provided for in the Constitution when the President of the Republic may be removed from office is *a gross violation of the Constitution*. This constitutional provision is inseparably related to Paragraph 2 of Article 82 of the Constitution

wherein the oath of the President of the Republic is provided for. While taking the oath, the President of the Republic takes a pledge *inter alia* to be faithful to the Constitution of the Republic of Lithuania, thus, from the moment of taking the oath there arises a duty to the President of the Republic to exercise his powers in the manner so that the Constitution would not be violated. The answer to the question by what deed (action, failure to act) the President of the Republic can violate the Constitution depends also upon how the Constitution is understood: whether only as a whole of *explicitly* entrenched constitutional norms, or whether as a legal act composed not only from norms, but also from constitutional principles, an act which has not only the letter, but also the spirit which is expressed by the constitutional principles and which is juridicised in the doctrine of the Constitutional Court. It is not only a theoretical question. Also the fact whether constitutional liability of the President of the Republic arises only from a violation of the disposition (rule) entrenched in *a norm* of the Constitution, or whether it can arise when a certain constitutional principle is violated as well, depends upon how the Constitution is understood. In the legal scientific literature there is not a single opinion as regards this issue: some authors maintain that there appears constitutional liability when a deed of a participant (subject) of constitutional legal relations "is not in line with the model of conduct entrenched in *the norm* of constitutional law",[3] whereas other authors point out that the Constitutional Court verifies the compliance of not only legal acts, but also *"the compliance of actions* of highest state officials *with the Constitution, the constitutional norms and principles"*.[4]

It must be said that the Constitution is not a digest of laws, it cannot regulate all relations appearing in society in the manner when concrete rights and duties of subjects of legal relations are established. The Constitution regulates a big part of very important social relations only in most general manner. Such is the objective specificity of the constitutional regulation.[5] The Constitutional Court has held that although the legal regulation entrenched in the Constitution always has a certain textual form, a certain linguistic expression, however, the Constitution is not only its text and not only the legal norms entrenched in it. The Constitution means also such deep and fundamental values which can be devoid of concrete textual expression, but which stem from the constitutional norms (or which are reflected by such norms) and constitutional principles as well as from the entirety of the constitutional regulation.[6] It is not always easy to disclose ("discover") the law hidden behind the text of the Constitution. It is recognised in the legal literature that the text of the Constitution becomes the point of departure in disclosing the real meaning and content of the constitutional regulation, that the genuine "centre of gravity" of understanding the Constitution as the normative reality is moved from the

3 See, e.g., Bacevičius, V., *supra* note 2, p. 96.

4 Jarašiūnas, E. Lietuvos Respublikos Konstitucinis Teismas ir aukštųjų valstybės pareigūnų apkalta: kelios aktualios problemos [The Constitutional Court of the Republic of Lithuania and Impeachment of High Ranking State Officials: Some Important Problems]. *Jurisprudencija*. 2006, 2(80): 42.

5 Mesonis, G. Kai kurie Konstitucijos interpretavimo aspektai: expressis verbis ribos [Some aspects of Interpretation of the Constitution: The Limits of Expressis Verbis]. *Jurisprudencija*. 2008, 5(107): 20.

6 Ruling of the Constitutional Court, *supra* note 1, of 25 May 2004.

Constitution – the main act – to the constitutional jurisprudence by means of constitutional justice.[7] There cannot be and there is not any opposition between constitutional norms and constitutional principles. Constitutional principles permeate the entire constitutional regulation, they lie in the content (and not only in it) of constitutional norms. Constitutional principles can be derived from the norms of the Constitution, from other constitutional principles and from the entirety of the constitutional regulation. Constitutional principles are deemed as independent elements of the legal system, with specific features and functions, it is agreed that constitutional principles have the feature of direct regulation.[8] Although it is impossible that the content of constitutional principles would be exhaustively defined (in some finite manner), their content has a great many aspects, however, constitutional principles always have a clearly defined fundamental meaning, they always reflect the basic, fundamental values upon which the Constitution is grounded; constitutional principles are a peculiar "carcass" of the constitutional regulation, and upon such a "carcass" the normative material is "moulded".[9] It is the constitutional principles that organise all the provisions of the Constitution into a harmonious system, and thus do not permit that in the Constitution there is any existence of internal contradictions or such an interpretation thereof which distorts and denies the essence of any provision of the Constitution, or any value entrenched in and protected by the Constitution. The treatment of the Constitution as a fundamental collection (system) of principles which serves as the grounds for the entire legal system does not deny the normativeness of the Constitution, "since the general principles of the Constitution are filled with normative matter anyway".[10]

Thus, the provision entrenched in Article 74 of the Constitution that the President of the Republic is prohibited from gross violation of the Constitution means not only the fact that the President of the Republic may not violate the norms of the Constitution. In our opinion, this prohibition also means that the President of the Republic may not violate the constitutional principles as well, that he must heed the values entrenched in the Constitution, that the President of the Republic must heed such concept of the provisions of the Constitution, which is presented by the Constitutional Court in its acts.[11] We cannot agree with the opinion that constitutional liability arises when

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7 Jarašiūnas, E. Jurisprudencinė Konstitucija [The Jurisprudential Constitution]. *Jurisprudencija*. 2006, 12(90): 24.

8 Jankauskas, K. *Teisės principų samprata ir jos įtvirtinimas konstitucinėje jurisprudencijoje*. Daktaro disertacija. Socialiniai mokslai (teisė) [The Concept of Legal Principles and Its Entrenchment in the Constitutional Jurisprudence. Doctoral thesis. Social sciences (law)]. Vilnius: Mykolo Romerio universitetas, 2005, p. 54.

9 The constitutional principles are very thoroughly and exhaustively considered by Prof. E. Kūris in his manual *"Lietuvos konstitucinė teisė" (Lithuanian Constitutional Law)*, as well as in his articles published in *Jurisprudencija* (See Kūris, E. Konstituciniai principai ir Konstitucijos tekstas [The Constitutional Principles and the Text of the Constitution]. *Jurisprudencija*. 2001, 23(15): 46–70; 2002, 24(16): 57–70).

10 Safjan, M. *Rol konstitucionnych sudov v procese sozdanija konstitucionnogo prava* [The Role of Constitutional Courts in the Process of Making of Constitutional Law]. Moskva: Norma, 2002, s. 134.

11 In its rulings the Constitutional Court has held more than once that the concept of constitutional norms presented by the Constitutional Court is binding upon all subjects of lawmaking – the Seimas, the Gov-

a deed of the participant (subject) of constitutional legal relations "is not in line with the model of conduct entrenched in *the norm* of constitutional law" not only because it is not in accordance with the concept of the Constitution as a complex legal reality, which is composed of constitutional norms and constitutional principles, and which has implicit and explicit legal regulation. If one follows the aforesaid opinion, the limits of the constitutional liability of the President of the Republic constitutional are very much narrowed and there appears a possibility to avoid constitutional liability in the situations where the constitutional norm is not violated, but where there was a violation of the constitutional principle. It is not helpful for protecting the Constitution and the values entrenched therein. But this is precisely the main objective of constitutional liability of the President of the Republic and its main purpose.

The President of the Republic may be removed from office under procedure for impeachment proceedings not for any violation of the Constitution, but only for *gross* violation thereof. Not every violation of the Constitution is in itself a gross violation of the Constitution. Neither the Constitution, nor laws or other legal acts *explicitly* entrench as to what violation of the Constitution is a gross one. The Constitutional Court has held that Constitution is grossly violated in all cases when the President of the Republic breaches the oath,[12] that "by the actions of the President of the Republic the Constitution would be violated grossly in cases when the President of the Republic held its office in bad faith, acted not in the interests of the Nation and the state but his personal interests, those of individual persons or their groups, acted with purposes and in the interests that are incompatible with the Constitution and laws, with public interests, knowingly failed to discharge the duties established for the President of the Republic in the Constitution and laws".[13] It must be said that it is impossible to define in advance any concrete actions by which the President of the Republic might grossly violate the Constitution. It is also impossible to provide in advance for any exhaustive list of such actions. Therefore, the Constitutional Court quite reasonably held that "while deciding whether the actions of the President of the Republic grossly violated the Constitution, one must assess in each case the content of concrete actions of the President of the Republic as well as the circumstances of their performance".[14]

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ernment, and also the President of the Republic – as well as the subjects that apply law, since all these subjects, when they are issuing and applying legal acts, are not allowed to disregard the concept of constitutional norms presented by the Constitutional Court.

12 Ruling of the Constitutional Court "On the compliance of President of the Republic of Lithuania Decree No. 40 'On Granting Citizenship of the Republic Lithuania by Way of Exception' of 11 April 2003 to the extent that it provides that citizenship of the Republic Lithuania is granted to Jurij Borisov by way of exception with the Constitution of the Republic of Lithuania and Paragraph 1 of Article 16 of the Republic of Lithuania Law on Citizenship" of 30 December 2003. *Official Gazette.* 2003, No. 124-5643.

13 Conclusion of the Constitutional Court "On the compliance of actions of President Rolandas Paksas of the Republic of Lithuania against whom an impeachment case has been instituted with the Constitution of the Republic of Lithuania" of 31 March 2004. *Official Gazette.* 2004, No. 49-1600.

14 *Ibid.*

3. Breach of Oath

Breach of oath is another ground for removal of the President of the Republic from office. Under Paragraph 1 of Article 82 of the Constitution, the President of the Republic takes an oath to the Nation "to be faithful to the Republic of Lithuania and the Constitution, to conscientiously fulfil the duties of his office, and to be equally just to all". The re-elected President of the Republic must also take the oath (Paragraph 2 of Article 82). The oath of the President of the Republic is also entrenched in the Law on President of the Republic of Lithuania[15] which provides that the President of the Republic must swear to the Nation to be faithful to the Republic of Lithuania and its Constitution, to respect and implement the laws, to protect the integrity of the territories of Lithuania, to conscientiously execute his duties and to be equally just to each individual, to strengthen, to the best of his ability, the independence of Lithuania, and to serve the Homeland, democracy and the well-being of the people of Lithuania. Although the text of the oath of the President of the Republic established in the law is a little bit different from the text of the oath entrenched in the Constitution, it does not mean that there is a contradiction between them, or that they are not harmonised. It is possible to assert that the provisions of the oath of the President of the Republic which are established in the law do not expand but only detail the values which are entrenched in the Constitution and which must be followed by the President of the Republic. The Constitutional Court has held that "the provision of Paragraph 2 of Article 77 of the Constitution that the President of the Republic performs everything that he is charged with by the Constitution and laws, when one takes account of the content of the oath of the President of the Republic which is established in Paragraph 1 of Article 82 of the Constitution, means that the President of the Republic, when implementing all the powers that he is charged with by the Constitution and laws, must follow only the Constitution and laws and may not violate them, that the President of the Republic must act only in the interests of the Nation and the State of Lithuania, that the President of the Republic may not act by following the objectives or interests which are not in line with the Constitution and laws, the interests of the Nation and the State of Lithuania, and the public interests, as well as that the President of the Republic may not bring his personal interests or interests of some group above the interests of the society and the state, or act in a way which discredits the state power".[16]

The formulations "gross violation of the Constitution", "breach of oath" of Article 74 of the Constitution and the formulations "faithful to the Republic of Lithuania", "faithful to the Constitution", "conscientious fulfilment of the duties of office", "equally just to all" of the oath of the President of the Republic provided for in Article 82 of the Constitution are rather abstract, therefore, in the course of assessment whether there is a gross violation of the Constitution, whether there is a breach of oath, first of all it is necessary to disclose the content of corresponding constitutional provisions, and only after

15 The Law on the President of the Republic of Lithuania. *Official Gazette.* 2008, No. 135-5234.

16 Ruling of the Constitutional Court, *supra* note 1, of 25 May 2004.

that to assess the actions of President of the Republic. It is not always easy to do both, especially to assess the actions of the President of the Republic. What some may regard as completely incompatible with the Constitution and with the oath of the President of the Republic, could be regarded by others as a small deviation from requirements of the Constitution which cannot lead to constitutional liability. For instance, what is the content of the constitutional requirement "to conscientiously fulfil the duties of the office of the President of the Republic", what are the criteria upon which it would be possible to state that the President of the Republic fulfils the duties of his office *not conscientiously?* How is it possible to make a distinction between the right to adopt one or another decision at his discretion, which is provided for the President of the Republic in the Constitution, and *"not conscientious fulfilment of the duties of office"* which is prohibited by the Constitution? If there arose a question whether the actions of the President of the Republic are such so that it would be possible to assert that the President of the Republic "follows the interests which are *not* those of the Nation and the state", perhaps, an unvarying assessment of the actions of the President of the Republic would hardly be possible either, since there can be as many concepts of "interests of the Nation and the state" as there are people giving their opinion on this subject. It is possible to give even more similar examples when there are grounds to construe the content of respective constitutional provisions in a different manner, thus, also to differently construe whether the President of the Republic by corresponding actions has grossly violated the Constitution and breached the oath. However, the fact that the imperatives which must be followed by the President of the Republic are entrenched in the Constitution in a rather abstract manner does not mean that the content and essence of such imperatives are completely unclear and incomprehensible. Each of the specified constitutional imperatives has its own fundamental content, entrenches certain values which must be heeded and must not be violated by the President of the Republic. While implementing the powers ascribed to him by the Constitution, also when avoiding to perform or not performing the duties provided for him in the Constitution – in all these and other situations the President of the Republic must assess his deeds (action, failure to act) in the context of the Constitution (the values entrenched therein) and the taken oath.

4. Crime as Grounds for Removal from Office

Under Article 74 of the Constitution, "if it transpires that a crime has been committed", the President of the Republic may be removed from office. Even though at first glance it might seem that the provision "if it transpires that a crime has been committed" is not sufficiently precise from the legal standpoint, its choice was not a coincidence. The provision "if it transpires that a crime has been committed" has much broader content than the mere fact that President of the Republic may be removed from office *for commission of a crime*. Under the Constitution, only a court can state that a person has committed a crime. A person shall be presumed innocent until proved guilty according to the procedure established by law and declared guilty by an effective court judgement

(Paragraph 1 of Article 31 of the Constitution). The Constitution also provides that, while in office, the President of the Republic may neither be arrested nor held criminally or administratively liable (Article 86). Thus, under the Constitution, a court cannot state by its judgement that the President of the Republic has committed a crime. The constitutional provision "if it transpires that a crime has been committed" means *inter alia* that the Constitution provides for the right of the Seimas to decide itself whether the President of the Republic has committed a crime and to remove him (and, by the way, also the other subjects pointed out in Article 74 of the Constitution) from office, *in the absence of a court judgement* recognising that the President of the Republic is guilty of commission of the crime. This provision corresponds to the above-mentioned provision of Article 86 of the Constitution that, while in office, the President of the Republic may neither be arrested nor held criminally or administratively liable.

The Constitution does not disclose for commission of which crime the President of the Republic may be removed from office. Crimes could be varied ones, they can be grave or not so grave, they could be committed deliberately or through negligence, they could cause serious consequences or not cause them, they may be related to the performance of duties of office or they may be not related to them etc. It is pointed out in the legal literature that "the authority of powers is discredited in all cases when the Constitution is grossly violated and the oath is breached by the crime"[17] and that the person who by such a crime alongside has grossly violated the Constitution and breached the oath *must* be removed from office under procedure for impeachment proceedings.[18] When assenting to such an opinion, it must be said that the person should not evade the constitutional liability also in the cases when by the crime the Constitution has not been violated grossly and the oath has not been breached, but when *the state power has been discredited*.

On the other hand, Article 74 of the Constitution which provides that one of the grounds to remove the President of the Republic from office is "if it transpires that a crime has been committed" does not contain a reservation that the President of the Republic may be removed from office only for commission of such a crime by which the Constitution is grossly violated, the oath is breached or *the state power is discredited*. Consequently, under the Constitution, the person may be removed form office for commission of any crime. It goes without saying, the nature of the crime, as well as the nature of a gross violation of the Constitution, breach of oath, may determine the decision of the Seimas whether or not the person will be removed from office for commission of the crime, but *the nature of the crime* (crime through negligence, petty crime etc*.) is not to be regarded as a circumstance, which does not allow to commence the procedure for impeachment proceedings for commission of a crime and to remove the person from office*.

17 Statkevičius, M. Apkaltos padariniai [The Consequences of Impeachment]. *Teisė*. 2005, 56: 58.

18 *Ibid.*

In this respect the provision that impeachment proceedings are possible "for <…> actions in conflict with the Constitution" of Article 227 of the Statute of the Seimas is somewhat ambiguous. The formulation "for actions in conflict with the Constitution" may be understood in a varied manner, it may be interpreted also that it allegedly means that if the grounds of the proceedings is "if it transpires that a crime has been committed", then the crime must be such by which *the Constitution is violated* (under Article 227 of the Seimas, "for <…> actions in conflict with the Constitution"). However, such an interpretation would be groundless, since it would narrow the grounds of liability (which are established in the Constitution) of the President of the Republic, as well as other persons pointed out in Article 74 of the Constitution. On the other hand, the said provision of the Statute of the Seimas could also be interpreted, for example, in such a way: it does not require that the crime be such whereby the Constitution is violated, since *every crime* is incompatible with the Constitution, it is in conflict with the values and imperatives entrenched in the Constitution, thus, *it is in conflict with the Constitution*. Such a concept of Article 227 of the Statute of the Seimas would be more in line with the Constitution, since, as mentioned, Article 74 of the Constitution does not contain a reservation that the impeachment proceedings are possible only for commission of such a crime whereby the Constitution is violated and the state power is discredited. Whatever the case, the fact that the provision *"for actions in conflict with the Constitution"* of Article 227 of the Statute of the Seimas may be interpreted in a varied manner is not a good thing, because it creates preconditions for discussions whether the impeachment proceedings *may be initiated* with regard to the persons indicated in Article 74 of the Constitution, thus, with regard to the President of the Republic as well, and whether the corresponding person may be removed from office only for commission of such a crime by which the Constitution has been violated (under Article 227 of the Statute of the Seimas, "an action in conflict with the Constitution"), or for commission of any crime.

Under the Constitution, the legislator enjoys broad discretion in establishing which deeds are criminal ones. At the presently valid Criminal Code criminal deeds are grouped into crimes and criminal misdemeanours. The notion of "crime" employed in the Constitution has only the content characteristic of the said notion, it should not be interpreted in an expansive manner, as meaning that the President of the Republic may be removed from office also for such a criminal deed, which is a dangerous one, but which is not defined as a crime in the law. Consequently, while deciding whether to remove the President of the Republic from office for committing a crime, the Seimas is bound by the bodies of crime provided for in the Criminal Code. For the criminal misdemeanours provided for in the presently valid Criminal Code, the President of the Republic may not be removed from office, since the Constitution does not provide for such grounds of constitutional liability. If by a criminal misdemeanour the Constitution is grossly violated and the oath is breached, the President of the Republic may be removed from office not for the criminal misdemeanour, but for the gross violation of the Constitution and breach of oath.

5. The Subjects Deciding the Issue of Constitutional Liability of the President of the Republic

Under Article 74 of the Constitution, the President of the Republic may be removed from office under procedure for impeachment proceedings by the Seimas. It means that no other state institution or official has such powers, and that in case there are grounds for it provided in the Constitution, the Seimas can decide whether to remove the President of the Republic from office. The Constitution is an integral act, therefore, also the provisions of Article 74 of the Constitution, which constitute the institute of impeachment, are to be interpreted by revealing their logical, systemic and other links with the other provisions of the Constitution, which are related to removal of the officials specified in Article 74 of the Constitution from office under procedure for impeachment proceedings: with Item 4 Paragraph 3 of Article 105 of Constitution wherein it is established that the Constitutional Court shall present a conclusion "whether concrete actions of Members of the Seimas and State officials against whom an impeachment case has been instituted are in conflict with the Constitution", with Paragraph 3 of Article 107 of the Constitution wherein it is entrenched that "On the basis of the conclusions of the Constitutional Court, the Seimas shall take a final decision on the issues set forth in the Third Paragraph of Article 105 of the Constitution", also with Paragraph 2 of Article 107 of the Constitution whereby "The decisions of the Constitutional Court on issues ascribed to its competence by the Constitution shall be final and not subject to appeal". (It must be said that one of the issues pointed out in Paragraph 3 of Article 105 of the Constitution regarding which, on the basis of the conclusions of the Constitutional Court, final decisions are taken by the Seimas, is this: whether concrete actions of Members of the Seimas and other state officials against whom an impeachment case has been instituted are in conflict with the Constitution.) While construing the provisions of Article 74 of the Constitution, one is to take account also of Paragraph 2 of Article 5 of the Constitution, in which it is established that the scope of power is limited by the Constitution, and also of the constitutional principle of separation of powers.

The content of each presented constitutional provision, if it is construed in isolation from the other provisions, is sufficiently clear. However, the fact that individual constitutional provisions are sufficiently clear does not always mean that the legal regulation of the entire constitutional institute of impeachment is completely clear. In the discussed case it is also very important to establish the relation of all the indicated constitutional provisions.

It is possible to assert that the content of the official constitutional doctrine formulated by the Constitutional Court was determined by the fact that "in the Lithuanian model of impeachment, political and legal elements are intertwined",[19] that the *Constitution does not provide and presume the constitutional liability of the President of the Republic arising from the statement grounded on political arguments that the President of the Republic grossly violated the Constitution and breached the oath.*

19 Jarašiūnas, E., *supra* note 4, p. 41.

The provision "On the basis of the conclusions of the Constitutional Court, the Seimas shall take a final decision on the issues set forth in the Third Paragraph of Article 105 of the Constitution" of Paragraph 3 of Article 107 of the Constitution may not be interpreted only *verbatim* that, purportedly, under the Constitution, it is only the Seimas that takes a final decision on whether the Constitution was grossly violated and the oath was breached, and whether the person must be removed from office for this. If we chose such a way of interpretation of the provisions of the Constitution, we would have to state that the conclusion of the Constitutional Court on whether concrete actions of Members of the Seimas and other state officials against whom an impeachment case has been instituted are in conflict with the Constitution is only *advisory* (*of recommending character)*, that the Seimas may decide also quite differently than the Constitutional Court did?! If the Constitution was interpreted in such a way, one would completely disregard the legal aspects of impeachment and too much prominence would be given to *the political aspects* of impeachment since it is only the Seimas – an institution of political nature – that would have the right to take a final decision also on whether the Constitution was grossly violated and the oath was breached. If the Constitution was interpreted in such a manner, one would also completely ignore the constitutional principle of separation and balance of powers – *if the constitutional liability of the President of the Republic might appear from the statement which is grounded on political arguments that the President of the Republic grossly violated the Constitution and breached the oath, it would mean that the President of the Republic is completely dependent upon the Seimas, since the Seimas would be able to initiate the impeachment proceedings at any time and, paying no heed to the conclusion of the Constitutional Court that the actions of the President of the Republic are not in conflict with the Constitution, would be able to remove the President of the Republic from office?!* It is obvious that, if the Constitution is interpreted in such a manner, the President of the Republic elected by the entire nation might become an easy prey to the parliament, and that this would not be in compliance with the legal status of the Seimas and the President of the Republic and the model of their legal interrelations.

The official constitutional doctrine of impeachment formulated by the Constitutional Court is grounded on the fact that a conclusion on whether the actions of a person are in conflict with the Constitution may be *substantiated only by law*, thus, the Constitution assigns establishing the fact of violation of the Constitution – whether the Constitution was grossly violated and the oath was breached by the actions of the person – not to the Seimas, which is an institution of political nature, but it assigns it only to the Constitutional Court, which is formed not on political, but professional grounds.[20] The Consti-

20 In the legal literature it is sometimes groundlessly stated that "in the case of breach of oath it is not provided what institution should present a corresponding conclusion. It would mean that the Seimas itself adopts a political decision and in this case there is no requirement to establish the nature of breach of oath" (See, for example, Skaistys, A. Priesaikos institutas ir jo įgyvendinimo problemos [The Institute of Oath and Problems of Its Implementation]. *Jurisprudencija*. 2004, 54(46): 23). It must be said that the official constitutional doctrine is different: In its ruling of 25 May 2004, the Constitutional Court held that "Under the Constitution, only the Constitutional Court has the powers to decide whether the persons indicated in Article 74 of the Constitution, against whom an impeachment procedure has been initiated, have grossly violated

tutional Court held that the Constitution established such legal regulation, where the Constitutional Court decides whether the actions of a person are (are not) in conflict with the Constitution, whereas the Seimas decides whether to remove the person from office for the actions which are in conflict with the Constitution. In other words, *an institution of legal nature – the Constitutional Court – establishes the legal fact (violation of the Constitution is always precisely a matter of legal assessment), whereas an institution of political nature – the Seimas – applies constitutional liability for the stated violation of law*. Consequently, the provision "On the basis of the conclusions of the Constitutional Court, the Seimas shall take a final decision on the issues set forth in the Third Paragraph of Article 105 of the Constitution" entrenched in Paragraph 3 of Article 107 of the Constitution does not mean that the Seimas takes a final decision on whether the actions of a person are (are not) in conflict with the Constitution, but rather that the Seimas takes a final decision on whether to remove the person from office for the actions which were recognised as being in conflict with the Constitution by the Constitutional Court. Since, under Paragraph 2 of Article 107 of the Constitution, "The decisions of the Constitutional Court on issues ascribed to its competence by the Constitution shall be final and not subject to appeal", such an interpretation of the provisions of the Constitution also implies that *the Seimas does not enjoy powers to decide whether the conclusion of the Constitutional Court is reasonable and lawful, that the Seimas cannot change this conclusion, it cannot deny it or question it otherwise.* The Constitutional Court also emphasised that, under the Constitution, such a conclusion cannot be changed or annulled either by referendum, or by way of elections or any other way.

Thus, the Constitutional Court, while taking account of *inter alia* the principles of a democratic state under the rule of law and separation and balance of branches of state power, interpreted the provisions of the constitutional institute of impeachment in a manner so that there would be a possibility to counterbalance the powers of the Seimas, as a political institution, in the impeachment proceedings. The fact that the official constitutional doctrine has entrenched that the Seimas does not enjoy any powers to decide whether concrete actions of Members of the Seimas and state officials against whom an impeachment case has been instituted are in conflict with the Constitution, is a guarantee to the persons specified in Article 74 of the Constitution, thus, also to the President of the Republic, that no one will apply constitutional liability to them unreasonably. Removal from office is only possible when there is a conclusion of the Constitutional Court that the person has grossly violated the Constitution and breached the oath. Consequently, if the Constitutional Court held that the actions of the person are not in conflict with the Constitution, the Seimas may not remove the President of the Republic from office

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the Constitution (in view of the fact that the gross violation of the Constitution constitutes also the breach of oath – to decide whether such persons breached the oath). The conclusion of the Constitution Court that a person has grossly violated the Constitution (and thus has breach the oath) is final. No state institution, no state official, no other subject may change or revoke such a conclusion of the Constitution Court. Under the Constitution, such a conclusion may not be changed nor revoked either by referendum or elections, or in any other way."

under procedure for impeachment proceedings for a gross violation of the Constitution and breach of oath.[21]

The provision that the Seimas does not enjoy powers to decide whether concrete actions of Members of the Seimas and state officials against whom an impeachment case has been instituted are in conflict with the Constitution also means that the Seimas does not enjoy powers to decide whether the Constitution has been *grossly* violated by such actions. It is only the Constitutional Court that can state the fact of gross violation of the Constitution. Such powers are not provided in the Constitution for any other state institution or any other state official. The statement that actions of the President of the Republic are in conflict with the Constitution also means that it is stated that the Constitution has been violated. However, not every violation of the Constitution is in itself a gross violation of the Constitution. When deciding whether the Constitution has been violated grossly, it is necessary to assess each time not only the content of the actions performed by the President of the Republic, but also the circumstances of their performance. The Constitutional Court has held that "the Constitution is grossly violated in all cases when the President of the Republic breaches the oath",[22] that "by the actions of the President of the Republic the Constitution would be violated grossly in cases when the President of the Republic held its office in bad faith, acted not in the interests of the Nation and the state but his personal interests, those of individual persons or their groups, acted with purposes and in the interests that are incompatible with the Constitution and laws, with public interests, knowingly failed to discharge the duties established for the President of the Republic in the Constitution and laws".[23]

Thus, the Constitution has entrenched such a model of impeachment of the President of the Republic, according to which in cases when the President of the Republic is held constitutionally liable for a gross violation of the Constitution and breach of oath, a conclusion of the Constitutional Court is necessary. A different situation is in the cases when the ground of removal of the President of the Republic from office is "if it transpires that a crime has been committed". It is an independent ground of constitutional liability. It has been mentioned that, under Article 86 of the Constitution, while in office, the President of the Republic may neither be arrested nor held criminally or administratively liable. Consequently, a court may not adopt a judgement by which it could be held that the President of the Republic has committed a crime. The provision of Article 74 of the Constitution that the Seimas may remove the President of the Republic from office "if it transpires that a crime has been committed" also means that the Seimas itself may state the fact of commission of the crime. However, under the Constitution, the Seimas, while deciding whether to remove the President of the Republic from office for commission of a crime must apply to the Constitutional Court in all cases, requesting a conclusion on *whether the Constitution has not been grossly violated and the oath was breached*

21 Conclusion of the Constitutional Court of 31 March 2004, *supra* note 13.

22 Ruling of the Constitutional Court of 30 December 2003, *supra* note 12.

23 *Ibid.*

by committing the crime.[24] It is very important to elucidate this circumstance, because this thing, as we are going to see later, determines the constitutional legal consequences of impeachment: some legal consequences appear when the President of the Republic is removed from office for commission of a crime, by which the Constitution is grossly violated and the oath is breached, whereas different legal consequences appear if the Constitution is not grossly violated and the oath is not breached.

The statement by the Seimas that the President of the Republic has committed a crime, or the statement by the Constitutional Court that the President of the Republic has committed criminal deeds for which liability is provided for in the Criminal Code is not the same thing as the judgement of conviction by a court in a criminal case. Impeachment is not application of criminal liability even if a crime constitutes its grounds.[25] It is quite possible that the President of the Republic who was removed from office by the Seimas for commission of a crime will be acquitted in the criminal case. He may be acquitted even in the case if before that, in its conclusion the Constitutional Court has held that the President of the Republic committed a crime by which the Constitution was grossly violated and the oath was breached. There has been such a situation in the practice of Lithuanian courts. Thus, we are facing not only a theoretical, but also a practical problem: can, under the Constitution, courts of general jurisdiction, when they consider the criminal case, deny the facts established by the Constitutional Court? The legal literature reasonably points out that it is not a good thing if "courts draw different conclusions as regards the same actions, when they consider the same factual circumstances by the same means of substantiation",[26] that "there should not be any contradiction in the truth established in constitutional, criminal, civil or administrative cases".[27] However, there are different opinions as regards the significance of the facts established by the Constitutional Court to the courts that consider criminal, civil and other cases. It is hardly possible to unconditionally assent to the view that "the facts established in a constitutional justice case are a legal given, therefore, such establishment gives rise to legal consequences", that "the factual circumstances established in a case of the Constitutional Court are *res judicata*".[28] Such a view is grounded *inter alia* upon the fact that "the ordinary process cannot become a denial of the legal facts established in a constitutional justice case", that "there is not and there should not be any concept of a criminal or civil process (established by the law) that can in fact revise the results of the constitutional process".[29] While assenting to the statement "there is not and there should not be any criminal process (established by the law) that would enable to review the results of the constitutional process", still we must notice that it is not the criminal process esta-

24 Ruling of the Constitutional Court of 25 May 2004, *supra* note 1.

25 Ruling of the Constitutional Court "On the compliance of Article 259 of the Statute of the Seimas of the Republic of Lithuania with the Constitution of the Republic of Lithuania" of 11 May 1999. *Official Gazette*. 1999, No. 42-1345.

26 Statkevičius, M., *supra* note 17, p. 57.

27 Jarašiūnas, E., *supra* note 4, p. 46.

28 *Ibid.*

29 Jarašiūnas, E., *supra* note 4, p. 46.

blished by the law that revises the results of the constitutional process, but *the facts and circumstances (as well as their assessment) established in this process, i.e. in the course of the consideration of the criminal case*. The Constitution does not provide for any such criminal process, where in the course of consideration of a criminal case there would be no necessity to prove that a person has committed the crime. While considering a criminal case, the court is not allowed not to investigate all facts and circumstances which are significant to the case; quite to the contrary – under the Constitution, it must do so. Having assented to the view that "the legal facts established in a constitutional justice case are a given, which may not be changed in the criminal process", one would also have to assent to the fact that the court considering a criminal case, purportedly, would not have to investigate the factual circumstances of the case, would not have to assess the evidence, that it would be suffice to enter into the judgement of conviction what has already been established by the Constitutional Court and to decide only on the amount of punishment imposed upon the person?! However, would it be possible in such a case to assert that one has secured the constitutional right of the person, who was charged with the commission of a crime, to a public and fair hearing of his case by an independent and impartial court, that one has secured the constitutional right of the person to a fair legal process, the right to defence which includes *inter alia* the right of the person to submit evidence, to assess the evidence in the case as well as the right to have an advocate? Would in such a case the constitutional imperative that a person shall be presumed innocent until proved guilty according to the procedure established by law and declared guilty by an effective court judgement be implemented? The fact that the person made use of or was capable of making use of corresponding rights in the constitutional justice case (in the constitutional justice process) does not mean that the person does not have such a right in the criminal process or that in the criminal process such rights may be implemented only in a formal manner. The Constitution does not allow to establish any such legal regulation whereby a person charged with the commission of a crime would not have real opportunities to defend himself in the course of hearing his criminal case in a court. Thus, not from the ordinary law, but from the Constitution itself arise preconditions allowing a court, which hears a criminal case, to deny the facts established by the Constitutional Court, and their legal assessment. The Constitutional Court itself has recognised this when it held that "removal of the person from office or revocation of his mandate of Seimas member in accordance with the procedure for impeachment proceedings because of the suspicion of the commission of crime is not binding upon the court".[30]

On the other hand, it is to be assumed that the main issue is not whether a court of general jurisdiction, in a criminal case heard by it, may question the facts established by the Constitutional Court and their legal assessment. Yes, under the Constitution, it can do so. It is much more important to establish such legal regulation where the investigation and assessment of facts and evidence in constitutional justice cases, when the Constitutional Court has to decide whether the President of the Republic grossly violated the

30 Ruling of the Constitutional Court of 11 May 1999, *supra* note 25.

Constitution and breached the oath by committing a crime, would take place according to all requirements of criminal process. It would diminish possibilities for courts to draw different conclusions on the same actions and factual circumstances when they are proved by the same means of proving. The means of proving in the constitutional and criminal process should not be different. However, even if such means of proving are made uniform, it would not guarantee that different courts – the Constitutional Court and the court of general jurisdiction hearing the criminal case – would always assess in the same manner the same facts established by the same means of proving. It goes without saying, different assessment of actions of the President of the Republic made by different courts does not strengthen the trust of the public in decisions of courts, including the Constitutional Court. The constitutional jurisprudence has interpreted that the Seimas, while enjoying the powers to decide itself, without investigation of legal institutions (without a court judgement of conviction), whether to remove the person from office "if it transpires that a crime has been committed", may state the fact of commission of a crime only when the crime is obvious; in cases when the fact of commission of a crime is not clear, the Seimas may not conduct the impeachment on the grounds of the specified ground until a court judgement of conviction is not adopted and gone into effect.[31] Although the Constitutional Court has formulated this provision while considering the powers of the Seimas in the impeachment proceedings, in the opinion of the author, the Constitutional Court itself must also follow such a provision. Otherwise, there is a big possibility that a court considering the criminal case can deny the facts established by the Constitutional Court and assess them in a different manner.

7. Some Notes Concerning the Guilt of the Subject of Constitutional Liability and Sanctions of Constitutional Liability

One of the most complicated issues confronted in the course of deciding whether the President of the Republic may be removed from office is *the guilt* of the President of the Republic. Can the President of the Republic be held constitutionally liable only when he is guilty for the actions by which the Constitution is grossly violated and the oath is breached, or can he be removed from office for said actions also in the absence of guilt? In other words, can the guilt of the President of the Republic be presumed without the necessity to prove it? For instance, in the legal scientific literature it is maintained that "if the actions of the President of the Republic or the sequence of such actions weakens the security of this country, even though this is not a crime, or his other actions violate the interests of this country, then it is possible to initiate the impeachment proce-

31 Ruling of the Constitutional Court "On the compliance of Paragraph 1 of Article 230 of the Statute of the Seimas of the Republic of Lithuania and Decree of the President of the Republic of Lithuania No. 397 'On the Proposal to Institute Impeachment Proceedings Against the Member of the Seimas of the Republic of Lithuania Artūras Paulauskas' of 12 March 2004 with the Constitution of the Republic of Lithuania" of 15 April 2004. *Official Gazette.* 2004, No. 56-1948.

edings on the grounds of breach of oath".[32] Remembering also another statement "in the case of breach of oath it is not provided what institution should present a corresponding conclusion. It would mean that the Seimas itself adopts a political decision and in this case there is no requirement to establish the nature of breach of oath",[33] it is possible to make an assumption that it is possible that the constitutional liability of the President of the Republic may arise only because it is stated that "actions of the President of the Republic weaken the security of this country"?! We would dare to doubt very much such a concept of breach of oath and constitutional liability of the President of the Republic only because it makes the President of the Republic too dependent upon the Seimas, since the Seimas, an institution of political nature, whenever disagreeing with actions of the President of the Republic, might decide anytime that "actions of the President of the Republic weaken the security of this country" and would be able to remove him from office. Let us remember that, under Item 1 of Article 84 of the Constitution, the President of the Republic shall decide the basic issues of foreign policy, consequently, he enjoys not only constitutional powers to adopt corresponding decisions related to security of this country, but also a certain freedom of discretion in adopting one or another decision. Can the President of the Republic really be removed from office also for such actions which "weaken the security of this country" if the President of the Republic acts in good faith, if he adopts respective decisions without any personal or group aims and interests, or any other aims and interests which are contrary to the state, but only because that, in the opinion of the President of the Republic, such decisions must have been useful to the state? In other words, can the President of the Republic be removed from office for the actions which "weaken the security of this country" in the absence of guilt of the President of the Republic, if his actions are only implementation of the powers provided for to the President of the Republic, even though such implementation is not a very good one? Finally, one should not reject the idea that the President of the Republic might have made a mistake – is it possible to remove the President of the Republic from office also for a mistake?

Guilt is a general and universally recognised principle of legal liability in all branches of law, thus, in constitutional law as well. If guilt is a necessary element of a constitutional delict, thus, also an element of the constitutional liability of the President of the Republic, then, what should be the form of the guilt so that there could arise the constitutional liability of the President of the Republic? In the legal theory it is often pointed out that a violation of law can be committed intentionally or through negligence, that the intention may be direct or indirect, that negligence may manifest itself through carelessness etc. It must be said that the indicated forms of guilt are characteristic of criminal liability, however, can they be mechanically transferred to constitutional law?

Neither the legal literature, nor the constitutional jurisprudence contains more or less exhaustive answers to these questions. However, in the doctrine of impeachment formulated by the Constitutional Court, some features of the concept of guilt of the

32 Skaistys, A., *supra* note 20, p. 23.

33 *Ibid.*

President of the Republic are pointed out. From the deeds by which the Constitution can be violated grossly and which are pointed out by Constitutional Court, it is possible to draw a conclusion that the President of the Republic may be removed from office *not only when* he has performed corresponding actions *by direct intention,* e.g., "acts by following his own private interests, the interests of individual persons or their groups", "does not discharge consciously the duties established for the President of the Republic in the Constitution and laws" etc. The formulations employed by the Constitutional Court – "acts by following not the interests of the Nation and the state", "discharges his duties in a dishonest manner", "acts while having the aims and interests which are incompatible with the Constitution and laws, with public interests" – show that the President of the Republic may be removed from office also when his guilt is manifested by *indirect intention*. The question of guilt of the President of the Republic for his actions by which the Constitution was grossly violated and the oath was breached is decided by the Constitutional Court. It is not very important if the form of the guilt of the President of the Republic is indicated *expressis verbis* in the conclusion of the Constitutional Court, or whether it is possible to decide about the concrete form of the guilt from the arguments presented in the conclusion. Whatever the case, it is possible to assert that the President of the Republic may be removed from office only when he *is guilty* of the actions by which the Constitution is grossly violated, the oath is breached and a crime is committed. Thus, the mere deed (action, failure to act) of the President of the Republic is not enough so that the President of the Republic could be removed from office under procedure for impeachment proceedings – guilt is a necessary element of constitutional liability of the President of the Republic.

It has been mentioned that the constitutional liability of the President of the Republic is different from other legal liability also in that *the special sanctions* are applied. Their specificity is manifested not only in the fact that the President of the Republic is removed from office. The Constitutional Court has held that the removal of the President of the Republic from office, as well as of any other person indicated in Article 74 of the Constitution, who has breached the oath and grossly violated the Constitution, according to the procedure for impeachment proceedings, is not an end in itself, that the purpose of the constitutional institute of impeachment is not only a one-time removal of such persons from office, but it is much broader: it purpose is to prevent the persons who have grossly violated the Constitution and breached the oath from holding the office provided for in the Constitution, the beginning of which, according to the Constitution, is linked with taking the oath specified in the Constitution.[34] Thus, the content of the constitutional sanctions (constitutional liability) applied under procedure for impeachment proceedings is also composed of removal of a person, who has grossly violated the Constitution and breached the oath, from office, and also of the prohibition stemming therefrom for such a person to hold any office provided for in the Constitution, which can be taken only after the person takes the oath provided for in the Constitution. Consequently, the President of the Republic, who was removed from office for gross violation of the

34 Ruling of the Constitutional Court of 25 May 2004, *supra* note 1.

Constitution and breach of oath, will never be allowed to be elected the President of the Republic, a Member of the Seimas, he may not be a member of the Government, as well as the State Controller, since, under the Constitution, the beginning of all the specified offices is linked with taking an oath. The Constitution provides for only one exception – a person, who was removed from office for commission of such a crime by which the Constitution was not grossly violated or the oath was not breached, may, in the future, hold such an office the beginning of which is linked with taking the oath provided for in the Constitution. This rule stems from the provision of Paragraph 2 of Article 56 of the Constitution that a person who has fulfilled punishment imposed by a court judgement may be elected a Member of the Seimas, and from the provision of Paragraph 1 of Article 78 of the Constitution that a person, if he may be elected a Member of the Seimas, may be elected President of the Republic.

Conclusions

1. Gross violation of the Constitution, breach of oath, commission of a crime are violation of law. *The object* of the constitutional *delict* is the values entrenched in the Constitution, which are reflected by constitutional norms and principles; *the objective part* of the delict is a deed (action or failure to act) contrary to (incompatible with) the Constitution; the President of the Republic is *the subject* of the delict; *the subjective part* of the delict is guilt of the President of the Republic as his psychological relation with the deed contrary to (incompatible with) the Constitution and its consequences.

2. Constitutional liability may be applied to the President of the Republic only for a deed (action, failure to act) which the President of the Republic has done while being in office. The President of the Republic may not be removed from office for actions, which he committed prior to holding office.

3. The provision entrenched in Article 74 of the Constitution that the President of the Republic must not violate the Constitution grossly and must not breach the oath means that the President of the Republic may not violate not only the constitutional norms, but also the constitutional principles, that the President of the Republic must heed the values entrenched in the Constitution and such concept of the provisions of the Constitution, which is presented in the acts of the Constitutional Court.

4. The constitutional provision "if it transpires that a crime has been committed" means *inter alia* that the Constitution provides for the right of the Seimas to decide itself whether the President of the Republic has committed a crime and to remove him from office, in the absence of a court judgement recognising that the President of the Republic is guilty of commission of the crime.

5. The removal of the President of the Republic from office under procedure of impeachment proceedings due to a suspicion that the crime has been committed is not binding upon a court of general jurisdiction which considers the criminal case.

6. The official constitutional concept of the functions of the Seimas and the Constitutional Court in the impeachment proceedings was determined by the fact that the Constitutional Court, while analysing the constitutional norms related with the impeachment proceedings, gave priority not to political, but legal aspects of the institute of impeachment. Under the Constitution, only the Constitutional Court can decide whether actions of the President of the Republic are in conflict with the Constitution. The Seimas may not change or question the conclusion of the Constitutional Court. On the grounds of the conclusion of the Constitutional Court that the actions of the President of the Republic are in conflict with the Constitution, the Seimas decides only whether to remove the President of the Republic from office.

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RESPUBLIKOS PREZIDENTO PAŠALINIMAS IŠ PAREIGŲ: KAI KURIE KONSTITUCINIO DELIKTO TEORINIAI ASPEKTAI

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Santrauka. *Pagal Lietuvos Respublikos Konstitucijos (toliau – Konstitucija) 74 straipsnį Respublikos Prezidentas gali būti pašalintas iš pareigų apkaltos proceso tvarka už šiurkštų Konstitucijos pažeidimą, priesaikos sulaužymą arba paaiškėjus, jog padarytas nusikaltimas. Respublikos Prezidentą iš pareigų gali pašalinti tik Seimas; tai daroma apkaltos proceso tvarka, kurią nustato Seimo statutas. Respublikos Prezidentas gali būti pašalintas iš pareigų, kai už tai balsuoja ne mažiau kaip 3/5 visų Seimo narių. Pagal Konstitucijos 105 straipsnio 3 dalies 4 punktą Konstitucinis Teismas teikia išvadą, ar Seimo narių ir valstybės pareigūnų, kuriems pradėta apkaltos byla, konkretūs veiksmai prieštarauja Konstitucijai. Apkaltos institutas yra Respublikos Prezidento ir kitų Konstitucijoje nurodytų valstybės pareigūnų veiklos viešos demokratinės kontrolės ir jų atsakomybės visuomenei būdas, apimantis inter alia galimybę pašalinti juos iš užimamų pareigų, jeigu jie nevykdo savo įsipareigojimo vadovautis tik Konstituciją ir teise, savo asmeninius arba grupinius interesus iškelia aukščiau visuomenės interesų, savo veiksmais diskredituoja valstybės valdžią. Respublikos Prezidento pašalinimas iš pareigų yra vienas iš Konstitucijoje įtvirtinto valstybės valdžių padalijimo principo, „stabdžių ir atsvarų" sistemos elementų.*

Šiurkštus Konstitucijos pažeidimas, priesaikos sulaužymas, nusikaltimo padarymas yra teisės pažeidimas. Konstitucinio delikto objektas yra Konstitucijoje įtvirtintos konstitucinės vertybės, kurias atspindi konstitucinės normos ir principai; delikto objektyvinę pusę sudaro Konstitucijai priešinga (su Konstitucija nesuderinama) veika (veikimas arba neveikimas); delikto subjektu yra Respublikos Prezidentas; delikto subjektyvinę pusę sudaro Respublikos Prezidento kaltė, kaip jo psichinis santykis su Konstitucijai priešinga (su ja nesuderinama) veika ir jos pasekmėmis.

Respublikos Prezidentui konstitucinė atsakomybė gali būti taikoma tik už veiką (veikimą, neveikimą), kurią jis padarė eidamas savo pareigas. Respublikos Prezidentas negali pažeisti ne tik konstitucinių normų, bet ir konstitucinių principų; Respublikos Prezidentas privalo paisyti Konstitucijoje įtvirtintų vertybių bei tokios Konstitucijos nuostatų sampratos, kurią savo aktuose yra pateikęs Konstitucinis Teismas.

Konstitucijoje nustatytas toks teisinis reguliavimas, kai Konstitucinis Teismas sprendžia, ar asmens veiksmai prieštarauja (neprieštarauja) Konstitucijai, o Seimas sprendžia, ar už veiksmus, kurie prieštarauja Konstitucijai, pašalinti asmenį iš pareigų. Taigi teisinį faktą (Konstitucijos pažeidimas visada yra būtent teisinio vertinimo dalykas) nustato teisinio pobūdžio institucija – Konstitucinis Teismas, o konstitucinę atsakomybę už konstatuotą teisės pažeidimą taiko politinio pobūdžio institucija – Seimas. Konstitucijos 107 straipsnio 3 dalyje įtvirtinta nuostata, kad „remdamasis Konstitucinio Teismo išvadomis, Konstitucijos 105 straipsnio 3 dalyje nurodytus klausimus galutinai sprendžia Seimas“, reiškia ne tai, jog Seimas galutinai sprendžia, ar asmens veiksmai prieštarauja (neprieštarauja) Konstitucijai, o tik tai, ar už veiksmus, kuriuos Konstitucinis Teismas pripažino prieštaraujančiais Konstitucijai, pašalinti asmenį iš pareigų.

Respublikos Prezidento konstitucinė atsakomybė nuo kitos teisinės atsakomybės skiriasi ir tuo, kad yra taikomos ypatingos sankcijos. Jų ypatingumas pasireiškia ne tik tuo, kad Respublikos Prezidentas pašalinamas iš pareigų. Konstitucinis Teismas yra konstatavęs, kad Respublikos Prezidento, kaip ir bet kurio kito Konstitucijos 74 straipsnyje nurodyto asmens, sulaužiusio priesaiką, šiurkščiai pažeidusio Konstituciją, pašalinimas iš užimamų pareigų apkaltos proceso tvarka nėra savitikslis, jog apkaltos instituto konstitucinė paskirtis yra ne tik vienkartinis tokių asmenų pašalinimas iš užimamų pareigų, bet daug platesnė – užkirsti kelią asmenims, šiurkščiai pažeidusiems Konstituciją, sulaužiusiems priesaiką, užimti tokias Konstitucijoje numatytas pareigas, kurių ėjimo pradžia yra susijusi su Konstitucijoje nurodytos priesaikos davimu.

***Reikšminiai žodžiai**: Respublikos Prezidentas, konstitucinis deliktas, pašalinimas iš pareigų, apkaltos procesas, Konstitucinio Teismo išvada.*

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