

NEW DEVELOPMENTS IN THE JURISPRUDENCE OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LITHUANIA

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S u m m a r y

The article discusses the rulings of the Constitutional Court of the Republic of Lithuania as sources of law. The rulings of the Constitutional Court are comparable with the Constitution itself as authoritative interpretation of the Constitution. The present article deals with the problems of the methods of interpretation of the Constitution. It also reflects on the new developments in the jurisprudence of the Constitutional Court. One of the developments discussed is related with the problems of execution of powers of the Constitutional Court when interpreted in light of constitutional law, whereas the other deals with the problems related with the textual formulations of the Constitution. These developments are analysed in light of the newest rulings of the Constitutional Court. The problem of the changing doctrine of interpretation in the rulings of the Constitutional Court is also focused on. A new possible development of the jurisprudence of the Constitutional Court to provide for a possibility of a person to file a complaint directly to the Constitutional Court is also discussed.

Introduction

It is hardly doubtful that the application of legal norms is inseparable from their interpretation, but the question is, what the limits of interpretation are, what method is more suitable, whether the court is free to choose a strict or liberal way of interpretation, and whether it is free to choose and change its doctrine of interpretation. Some scholars view legal interpretation as a relation between a new content and an old form, making such comparisons:

“Lawyers are accustomed to pouring new wine into old bottles and keeping the old labels ... But as we know the line between interpretation and new law is often blurred. Whenever a general rule is construed to apply to a new set of facts, an element of novelty is introduced; in effect, new content is added to the existing rule” [10, p.227].

Discussing the methods of interpretation, their effect and possible consequences of these methods, it is important to bear in mind the role of the Constitution as a fundamental law of the State. The constitutional text does not contain an explicit provision granting the authority of interpretation of the Constitution to a certain institution. However, it provides that

a court may not apply legal rules that raise concerns as to their compatibility with the Constitution. Confronted with this situation, a court is obligated to refer a case to the Constitutional Court. Article 102 of the Constitution establishes that the Constitutional Court decides whether the laws and other acts adopted by the Seimas are not in conflict with the Constitution, and whether the acts adopted by the President and the Government are not in conflict with the Constitution or laws. The Constitutional Court is granted wide powers by the Constitution. Its Article 107 reads:

A law (or part thereof) of the Republic of Lithuania or other act (or part thereof) of the Seimas, act of the President of the Republic, act (or part thereof) of the Government may not be applied from the day of the official promulgation of the decision of the Constitutional Court that the act in question (or part thereof) is in conflict with the Constitution of the Republic of Lithuania.

The decisions of the Constitutional Court on issues ascribed to its competence are final and not subject to appeal.

It follows that the Constitution establishes a direct possibility to decide questions of compatibility of legal acts with the Constitution. The consequence of finding of conflict is a 'disqualification' of a legal rule, its elimination from the effective legal system.

I would consider that it is not subject to doubt that this process of disqualification of a legal rule is related to a clear and well-argued reasoning. It would be difficult to allow that such motives might be separated from the very binding nature of the decision of the Court. Thus before evaluating current developments of interpretation of the Constitution by the Court, it is important to determine the legal consequences of such rulings, in other words, how important they are in the hierarchy of sources of constitutional law.

Rulings of the Constitutional Court as sources of constitutional law

The question of the rulings of the Constitutional Court as a source of law is a hotly debated one, especially when it comes to the issue of their place in the hierarchy of sources of law and the issue of their relationship with the Constitution itself.

Taking into consideration Article 72(2) of the law on the Constitutional Court, which provides that the rulings of the Constitutional Court have the power of law and are binding on all State institutions, courts, all enterprises, establishments, and organizations as well as officials and citizens, a conclusion might follow that the decisions of the Constitutional Court have the authority equivalent to law. However, the question is whether in general it is appropriate to compare a ruling of the Constitutional Court with a law? The purpose of the Article 72(2) of the law on the Constitutional Court is to emphasize the binding nature of the rulings of the Constitutional Court (these rulings, similarly as laws, are binding on every person).

The idea that the legal authority of the ruling of the Constitutional Court may not be automatically compared with that of a law finds support in an argument that if a contrary conclusion were made it would follow that the rulings of the Constitutional Court in the hierarchy of sources of law would be higher than the laws, because the rulings of Constitutional Court may disqualify a legal provision of a law or other legal act. Nevertheless it is worth emphasizing that if the Constitutional Court finds that a certain provision of a law contradicts the Constitution, this rule is not automatically eliminated from the law and is not abolished as such. In order to abolish this provision, the Parliament must vote to this effect. Nonetheless, as a consequence of the decision of the Constitutional Court the said provision becomes inapplicable and nude, non- enforceable (*ius nudum*). This situation reminds of the relationship of quiritian and praetorian law in the Roman law.

The preceding considerations would allow concluding that the ruling of the Constitutional Court is primarily related with the Constitution itself. It is an enactment, which

discloses the content of the constitutional norms and principles while establishing that the challenged provisions of a law or other legal act contradict the Constitution. The provisions found to be in conflict with the Constitution of the Republic of Lithuania are inapplicable from the day of the official proclamation of the ruling of the Constitutional Court. The ruling of the Constitutional Court on the one hand is an extension of the constitutional regulation, disclosing the constitutional rules or principles, and on the other hand an act acknowledging that a challenged law either contradicts or does not contradict the Constitution. Appearance of the constitutional jurisprudence as a new source of constitutional law demands modification of the general concept of the Constitution as a fundamental law, by substituting it with an idea of a living, constantly evolving Constitution” [4, p. 766].

The question is whether all rulings of the Constitutional Court should be considered as sources of law? Lithuanian legal doctrine is dominated by an opinion that the understanding of a source of law encompasses only those rulings of the Constitutional Court, which establish that a certain legal act contradicts the Constitution or laws. However, there is no uniform opinion on the question whether the rulings of the Constitutional Court should be treated as sources of law when they do not find a law to be in conflict with the Constitution or laws. Some claim that they do not have the same authority of a source of law. In my opinion these rulings should be attributed a status of a source of law, because by their nature – procedure of adoption, legal force – they do not differ from those rulings of the Court which find the legal acts in conflict with the Constitution or laws. It is not disputed, however, that the two types of decisions differ as to their legal consequences on the effective legal system: if it is not established that a legal act is unconstitutional, it remains in force.

It needs to be emphasized that the same ruling of the Constitutional Court might find a part of a law to be in contradiction with the Constitution and another part to be compatible with it. Consequently a division of the rulings of the Constitutional Court into different categories of their legal force might give rise to a number of problems. Furthermore, the arguments and motives of the Constitutional Court might overlap and be applicable to all parts of the challenged legal act.

Examining the rulings of the Constitutional Court as sources of law it is important to figure out whether it is only the resolution of the ruling that should be considered as a source of law, or also the motivating part, in which the Constitutional Court outlines the arguments and rationale leading to the resolution of a case. Doctrine diverges on this issue.

Not all scholars unanimously agree that the reasoning of the Constitutional Court should be understood as a source of law, e.g. Lapinskas is cautious in his statement that the part of the ruling of the Constitutional Court constituting resolution, as far as the constitutional and other legal provisions are construed by the Court, might be equated to a source of law [5, p.53]. Povilonis opines that the reasoning of the Constitutional Court might be helpful to the courts as prejudicial facts, which do not need to be reexamined before the courts might apply it when facing a similar issue in a particular case. Seen from this position, the rationale of the decisions of the Constitutional Court may acquire a separate judicial meaning [7, p.59]. Zilyis, after analyzing the acts of the Constitutional Court in the system of legal sources, comes to a conclusion that the acts of the Constitutional Court, reflecting the principle of uniformity of the Constitution, is indivisible, and the parts of the ruling of the Constitutional Court (descriptive, motivating and resolution) make up a unitary whole. The rationale, having been formulated and applied by the Constitutional Court, is an important aspect of a judicial precedent [8, p.77]. It follows that different authors having analyzed the same phenomenon from different angles, in one way or another come to a conclusion that the ruling of the Constitutional Court is indivisible and that the conclusions of the Constitutional Court are legally important.

It is important to emphasize that the concept of a ruling of the Constitutional Court as a unitary act has been approved by the Constitutional Court itself in its decision on the

interpretation of the ruling of December 21, 1999, delivered on January 12, 2000. It is not questionable that the argumentation provided in the motivating part of a ruling, where the legal norm is analyzed, cannot be separated from the very ruling of the Constitutional Court on compatibility of a certain legal provision with the Constitution and laws of Lithuania. Therefore they should be considered as elements of a source of law.

A ruling of the Constitutional Court is a unitary whole, and its motivating part, where the Court provides its interpretation and analysis of a certain legal provision or principle, is no less important. Besides, the Constitutional Court is the only institution with the authority to interpret the Constitution officially. Evaluating the compatibility of a certain legal provision or a legal act with the Constitution would be impossible without consideration of the motivating part of the ruling. Consequently all rulings of the Constitutional Court should be considered as sources of law disregarding whether the Court found a certain legal provision to contradict the Constitution or not.

The ruling of the Constitutional Court constitutes a very important source of constitutional law, which by its legal force is comparable with the Constitution. As Jarasiunas states “<...> the living Constitution is the doctrine formulated by the Constitutional Court, disclosing the essence of the constitutional principles and norms” [3, p.13].

New developments of interpretation in the practice of the Constitutional Court of Lithuania

The development of the constitutional doctrine and jurisprudence of the Constitutional Court are widely discussed by various authors [2, p.47-57; 9]. They have become apparent in the years 2000-2002. This question has been addressed during an international conference, which took place in Oslo in 2002 [11], it has also been thoroughly discussed by Kuris in his article “Constitution, constitutional doctrine and discretion of the Constitutional Court” [4, p.763-778]. Developments of the constitutional jurisprudence are likely to remain a subject of doctrinal analysis also in the future. Their thorough analysis and interpretation raises various questions and suggest many possible solutions.

Before discussing the new developments in the jurisprudence of the Constitutional Court and their legitimacy, it is important to clarify whether the Constitutional Court is free to overstep the limits formally defined by the law (e.g. established by the legislator) or formulated in the practice of the Constitutional Court, the doctrine of constitutional review and also the doctrine of determination whether the legal acts are in conformity with the Constitution.

The authority of the Constitutional Court is defined by its constitutional status. The Constitution of the Republic of Lithuania in its Chapter VIII regulates in detail the status of the Constitutional Court, its formation and authority.

Thus the Constitution clearly lists the subjects entitled to address the Constitutional Court, defines the authority of the Constitutional Court, and determines that apart from other questions it may investigate whether certain legal acts comply with the Constitution, and that if the legal act is found to be in conflict with the Constitution, it loses its legal force.

However certain provisions of the Constitution are worth to be analyzed closer. Article 102(2) provides that the status of the Constitutional Court and the procedure for the execution of powers therein shall be established by the Law on the Constitutional Court of the Republic of Lithuania. This provision allows arguing that the Constitution authorizes the Court to develop the doctrine of constitutional review within the limits of its competence. This provision should be interpreted in the light of Article 107(2) of the Constitution which provides that the decisions of the Constitutional Court on issues assigned to its jurisdiction by this Constitution shall be final and not subject to appeal.

Consequently the ways of solution of the issues assigned to the competence of the Constitutional Court, or in the terms of Article 102 paragraph 2 of the Constitution,

“procedure of execution of powers”, becomes a subject of interpretation of the Law on the Constitutional Court.

As such the mentioned circumstances should not be undermined when the developments of the jurisprudence of the Constitutional Court during the period of 2000-2002 are evaluated. The provisions of the law on the Constitutional Court should be considered only as a procedure of execution of powers, not a basis of execution of powers.

If this position is accepted, the developments of the jurisprudence of the Constitutional Court may be divided into two following groups:

1. The novelty of the tendencies of the first group might have been influenced by the legal regulation of the procedure of execution of legal powers of the Constitutional Court (i.e. the circumstances when the Constitutional Court applies the Constitution directly instead of basing it on the text of the Law on the Constitutional Court;

2. The tendencies of the second group are related to the problems of textual interpretation of the very Constitution, when constitutional provisions on the competence of the Constitutional Court comes into play (i.e. this time the Constitutional Court attempts to interpret the Constitution systemically, not literally).

The first group of new tendencies of the jurisprudence of the Constitutional Court might include the following:

1.1. The Court, deciding whether a legal act is in conformity with the Constitution, refers to the constitutional principles without indicating an Article of the Constitution (Rulings of the Constitutional Court of December 6, 2000, October 2, 2001, November 29, 2001, January 14, 2002);

1.2. The Court expands the question referred reviewing not only the legal provisions referred to the Court but also those provisions that the Court finds relevant (See rulings of the Constitutional Court of June 13, 2000, January 14, 2002);

1.3. The Court expands the question referred reviewing also constitutionality of a legal act which has not been referred to the Court, but is related with a disputed legal act. (Rulings of the Constitutional Court of November 29, 2001, January 14, 2002);

1.4. Reviewing constitutionality of a legal act which has been adopted but not yet in force (A ruling of the Constitutional Court of September 19, 2002).

1.5. Reviewing constitutionality of a legal act which is already abolished at the time of review (Rulings of the Constitutional Court of April 5, 2000, February 19, 2002, March 4, 2002 and September 19, 2002).

The second group of new developments of the jurisprudence of the Constitutional Court might include the following ones that I find to be related with possible textual problems of the Constitution. It is possible to distinguish between the following groups:

2.1. The Constitutional Court may rule on the question not only whether a certain legal act is in conformity with the Constitution, but also whether it is in conformity with other laws, although the Constitution does not directly provide for this possibility (see the ruling of the Constitutional Court of April 2, 2001);

2.2. The Constitutional Court expanded its competence to deciding whether the by-laws adopted by the Seimas are in conformity with the laws – this function also is not directly established in the Constitution. Article 105 of the Constitution provides that the Constitutional Court shall consider whether the laws of the Republic of Lithuania and legal acts adopted by the Seimas are in conformity with the Constitution. (see e.g. rulings of February 18, 1998, March 30, 2000, October 18, 2000).

It might be claimed that the second development of the jurisprudence of the Constitutional Court has been determined by the problems of the text of the Constitution instead of procedure of the execution of powers.

Several possible reasons for these developments might be distinguished. As to the first distinguished group (1.1.), determined by the legal regulation of the procedure of the execution of powers of the Court, I would be careful disputing that the principles enshrined

in the preamble of the Constitution are not a constituent part of the Constitution and the Court may not base its rulings on them.

It is not rare that the Constitutional Court deciding a case indicates both an Article of the Constitution, and a constitutional principle, which the legal act is found to be contradicting (see the Ruling of the Constitutional Court of September 19, 2002, November 29, 2001, etc.) It is especially frequent for the Court to find a violation of the principle of the law-governed State.

It is open to question whether it is always that the Court lacks a Constitutional provision and may not extend it by construing it wider, and consequently has no other choice but to refer to the constitutional principles in establishing a violation. Occasionally the applicants to the Court might face a problem whether to submit a similar case for the deliberation of the Court. This problem has arisen in the ruling of the Constitutional Court of October 2, 2001 on the compatibility of Article 269(4) of the code of violations of administrative law with the Constitution. In this case Vilnius regional administrative court asked to determine whether Article 269(4) of the code of violations of administrative law, establishing that if a decision to penalize by a fine is taken, the driver's license is not returned until the penalty is paid, is in conformity with Article 31(5) and Article 32(1) of the Constitution.

In this ruling the Constitutional Court agreed that the disputed provision is unconstitutional because of its incompatibility with constitutional principle of a law-governed state. It is hard to dispute that this decision is just, however it is open to discussion whether the argumentation of this ruling corresponds to the final conclusion reached. In this case the Constitutional Court emphasizes that "the driver's license is not returned until the fine imposed is paid is not a penalty for the violation of the Road traffic rules, <...> failure to return the driver's license until the fine is paid may not be construed as violating a constitutional principle of *non bis in idem*, <...> failure to return the driver's license until the fine is paid is not in violation of Article 31(5) of the Constitution". The applicant was arguing that a provision of Article 269(4) of the Code of Violations of Administrative law that after a person is imposed a fine for violation of the Road Traffic rules, his driver's license shall not be returned until he pays the fine, essentially means that a person may not use the document signifying his ability to drive a vehicle abroad, and in this way his right to leave Lithuania at his own will is restricted. The Court replied that "<...> the sole fact that a person may not use the said document abroad does not mean that the right of a citizen to leave Lithuania at his own will is restricted or denied <...>. A conclusion follows, that the said provision is not in violation of Article 32(1) of the Constitution, enshrining the right of a citizen to freely leave Lithuania." Therefore I would question whether the said administrative sanctions are in violation only of the principle of proportionality, as the Court later establishes. I find it hard to agree that the said administrative provisions really do not violate Articles 31 and 32 of the Constitution, and these Articles also are important ensuring the principle of the law-governed state. Thus if all mentioned provisions are in compliance with the concrete articles of the Constitution, it gives raise to a question, how this consistency may be found to be in violation of the constitutional principle of a law-governed state?

It may only be guessed what compromises constituted a basis for such a decision of the Constitutional Court, and whether all justices really agreed with the rationale and formulations of the ruling. In such cases separate or dissenting opinions might facilitate a better understanding of a ruling, however, Article 53(3) of the Law on the Constitutional Court, titled "Confidentiality of Deliberations of the Constitutional Court" establishes that the justices shall not have the right to announce the opinions voiced in the deliberation room or how the justices voted. Taking into account that this provision is not formulated in the Chapter VIII of the Constitution it could be argued that it has been determined by the legal regulation of the procedure of the execution of powers of the Court. It is possible that the present situation may change if a legal regulation is amended. Most of the other states

including Germany, Austria, Latvia, Russia and others have the institute of dissenting opinions of judges. Only some of states, e.g. Italy, do not allow for separate opinions of justices of their Constitutional Courts. I would like to agree with the opinion of E. Kuris that “<...> *en banc* deliberation of cases does not of itself require an *en banc* decision, furthermore, an *en banc* presentation to the society” [4, p. 772].

The second tendency of the first group (1.2) of the jurisprudence of the Constitutional Court of Lithuania most probably should not give rise to additional doubts on its justification. It is clear that if a legal provision contradicts some other legal provision, which has not been referred to the Court (or a by-law contradicts some other provision of law than that referred to), this allows to preclude further problems of interpretation of this acts, disregarding that the Court supplements the gaps of an application.

However, the third tendency listed in the first group (1.3.), when the Constitutional Court answers a question that has not been referred to the Court, i.e. reviews constitutionality of an adjacently applicable legal rule, raises concerns. This development is clearly reflected in the rulings of the Constitutional Court of November 29, 2001 and January 14, 2002.

In its ruling of January 14, 2002 the Constitutional Court decided that Article 16 of the law on state regulation of economic relations in agriculture in Lithuania, which had not been referred to the Court, the Court decided that Article 16 was in conflict with Article 129 and 131(2) of the Constitution.

The ruling of November 29, 2001 deserves a special attention. In this case a group of members of *Seimas* have referred only a question whether the governmental regulation concerning the application of the company “*Danisco Sugar A/S*” to obtain stocks in the sugar industry” was in compliance with Articles 46 (1), (4) and (5) and Article 95(1) of the Constitution, Articles 6 and 11 of the law on competition and Article 2 of the Law on the Government as well as the law “On the procedure of publication and entry into force of laws and other legal acts of the Republic of Lithuania”. This ruling exemplifies developments of the jurisprudence of the Constitutional Court listed in above-mentioned parts 1.1, 1.3 and 1.5.

Among others, in this ruling the Constitutional Court established that Article 3 of the law on the procedure of publication and entry into force of laws and other legal acts of the Republic of Lithuania (editions of July 4, 1996 and May 18, 1999), providing that governmental regulations which do not establish, amend or deny legal force to legal norms may remain unpublished if the persons having signed them decide to this effect, is not in compliance with the constitutional principle of a law-governed state. Also, the Court found that the Article 8(2) of the said law (edition of April 6, 1993 and May 18, 1999) providing that Governmental regulations may enter into force without publication if they do not establish, amend or deny legal force to legal norms also is not in compliance with the constitutional principle of a law-governed state.

This ruling of the Constitutional Court has been done by means of expansion of the scope of review, because the reference did not contain a request to determine whether Article 3 of the law on the procedure of publication and entry into force of laws and other legal acts was in compliance with the Constitution. It seems that the Constitutional Court has followed logic that failing to answer a question whether a certain law is in compliance with the Constitution, it is not possible to decide whether the laws indicated in the reference were in compliance with the Constitution.

Motivating its ruling of November 29, 2001, the Court has indicated that “the Constitutional Court, having established, that a certain act does not comply with the Constitution, even if the applicant in the proceedings has not questioned its compatibility with the Constitution, but on which a by-law is based, must find a violation. This obligation of the Court derives from the Constitution, and this is how the supremacy of the Constitution may be ensured.” In the ruling of January 14, 2002, the Court has argued in a different way:

“The Constitutional Court, having established that a certain provision of a law which is not disputed before the Court is unconstitutional, but which contributes to the regulation of the legal relations governed by a disputed law, the Court must establish the violation”. These rulings represent the developments of the new doctrine of the constitutional jurisprudence.

It would be difficult to disagree that problems indicated in both rulings of January 14, 2002 and November 29, 2001 are important and relate to the question that is being decided. However, the criteria facilitating such a decision of the Constitutional Court are especially important. The sole fact that some other legal act interferes into the governed legal relations and this act might be in conflict with the Constitution might be insufficient. It is open to interpretation whether the Constitutional Court will maintain this line of such a wide discretion that allows determining compatibility with the Constitution of any legal provision falling under the scope of regulation of a disputed legal act; whether the Court will equally attempt to review the constitutionality of all disputed acts and accept the wider scope of an object of review than requested by the applicant. Consequently this new development of the jurisprudence of the Constitutional Court requires attributing special additional consideration on the issue of which legal provision might be reviewed concerning its constitutionality so that the principles of legitimate expectations and proportionality established in the constitutional jurisprudence were not jeopardized.

The latter developments of the practice of the Constitutional Court might be discussed from the point that the Constitutional Court undertakes to review the constitutionality of a certain legal provision on its own initiative and in this way it expands its competence taking additional functions which it has not been explicitly authorized to perform.

A new development of the practice of the Constitutional Court to review constitutionality of a law which is adopted but not yet in force (1.4.) is not directly provided by the law of the Constitutional Court, however, it finds support in Article 105 of the Constitution, which does not condition the ability to review the constitutionality of a certain act on its entry into force. I would consider this to improve the efficiency of the rulings of the Constitutional Court, because a certain flawed, unconstitutional legal act may be determined inapplicable even before its entry into force. In the already discussed ruling of September 19, 2002, the Constitutional Court, deciding on constitutionality of certain provisions of the law of Telecommunications, bound to enter into force on January 1, 2003, emphasized that “in accordance with Article 105 of the Constitution the Constitutional Court considers and adopts decisions concerning the conformity of laws and other legal acts adopted by Seimas disregarding the question of the date of their entry into force.”

Constitutionality of an already abolished legal act (1.5.) is a difficult problem. The first impression is that this is a problem that belongs to the past, and it would be much more appropriate to analyze the legal regulation that is effective than to waste the time on an apparently theoretical problem. Analysis of such legal acts is unquestionably beneficial for the legal doctrine, but the Constitutional Court is established to perform constitutional review, and one of the main objects of constitutional review, as established in Article 107 of the Constitution is to preclude application of flawed legal acts. When the law is no longer in force, this function seems to be out of question, since the legal act may not be applied in any case due to other grounds, i.e. it has already been repealed, and no longer constitutes a part of a legal system. However, sometimes such a legal act even after its formal abrogation continues to affect rights and obligations of persons. This is especially apparent when the questions on constitutionality of certain provisions are referred to the Constitutional Court by the courts. For the persons involved in a legal dispute constitutionality of such a provision is a question of practical importance.

Article 69(4) of the law on the Constitutional Court establishes that abolishing of a disputed legal act for its unconstitutionality is a basis for a decision to terminate the legal proceedings between the parties; if this becomes apparent before the beginning of the Court hearing, the Constitutional Court decides this question in the deliberation room. The

law thus seems to have failed to establish a strict imperative, however, it has allowed the Court to determine on the question of further investigation of such a case, even though for a considerable period of time the Court has treated this instance as a clear basis to terminate the initiated proceedings. In its ruling of April 5, 2000 the Constitutional Court construed Article 69(4) of the law on the Constitutional Court that “a formulation is a basis to terminate the initiated proceedings” grants the Court a discretion to terminate the initiated proceedings in view of the circumstances of the case, but not as imposing an obligation to terminate the initiated proceedings in every case when the disputed legal act is abrogated. Continuing, the Court bases its decision on an argument that “if the question of constitutionality of an applicable legal act is not clarified, if applied this act might result in violation of constitutional rights and freedoms of a person”. Consequently when the Court refers a question to the Constitutional Court asking it to decide on the constitutionality of an abrogated legal act, it should not be doubted that this is directly related with the question of applicability of such act, and the Constitutional Court should decide whether it complies to the Constitution. Such solution of the problem would also be consistent with Article 107 of the Constitution.

However it is not upon every reference of courts that the Constitutional Court proceeds in determining constitutionality of the legal acts that are already abrogated. For example, in its ruling of July 13, 2001, the Constitutional Court established that Article 2 of a law on amendment of the law on prevention of the organized crime of June 26, 2001 the question of application of preventive measures on persons should be decided anew in 14 days, and terminated the proceedings on the basis of Article 69 part 4 of the Law on the Constitutional Court.

The question of propriety to consider whether a legal act complies with the Constitution is disputable when the question is referred by other subjects, for example, a group of members of *Seimas*, and at the time of the proceedings before the Court the disputed legal act is already abrogated and is inapplicable as a consequence. An earlier discussed ruling of the Constitutional Court of November 29, 2001 may again serve as an example. Especially interesting is its decision concerning the publication and entry into force of the legal acts with which it is possible to agree. This situation establishes itself when the legislative subjects attempt to avoid apparently negative consequences, adopting a legal act of formally different provisions which nevertheless provide identical legal regulation, expecting that the Court would terminate the initiated proceedings on the mentioned basis. However, the reasons leading the Court to a decision to terminate the proceedings should be especially strong and well argued. An important argument invoked by the Constitutional Court in its ruling of November 29, 2001 was a conflict of a disputed legal act with the constitutional principle of a law-governed state, and the Court in its ruling of September 19, 2002 invoked the necessity to ensure the principles of protection of inviolability of privacy.

Reviewing constitutionality of an abrogated legal act is a complicated and equivocal development. The Constitutional Court has an obligation to formulate definite criteria allowing it to review a legal provision no longer in force. No less important is to apply these criteria whenever the issue arises.

Concerning the developments of the jurisprudence of the Constitutional Court of the second group (2.1) it could be agreed with the Constitutional Court that the constitutional laws may not be in conflict with the Constitution, and the laws may not be in conflict with the Constitution and the constitutional laws; The Constitutional Court may determine whether a constitutional law is not in conflict with the Constitution and whether a law is not in conflict with a constitutional law (Ruling of the Constitutional Court of April 2, 2001). Such a treatment of constitutional laws complies with the principles of the hierarchy of sources of constitutional law. It is open to speculation why Chapter VIII, Articles 102 and 105 of the Constitution do not enlist the constitutional laws and what legal force should the constitutional laws have when ordinary laws are found to be in conflict with them. The

reason for this might have been the fragmented nature of the doctrine of the constitutional laws. These laws are mentioned in Article 69(3) of the Constitution, however the Article addresses only the question of the procedure of their adoption and amendment, which is clearly more complicated than the one applied for ordinary laws, but fails to address the question of their legal force. A constitutional law is also mentioned in an amended Article 47 of the Constitution, where it is attempted to establish a certain supplementary regulation of a higher legal level, especially concerning the issues of the said Article.

The question of classification of constitutional laws and their legal force is a difficult and ambiguous subject matter of investigation of constitutional law [6, p. 57–59, 65–68]. It is not questioned however that the laws, which are a constituent part of the Constitution, are treated as constitutional provisions and their legal force should not be disputed.

As to the second development of the second group (2.2.) in accordance with which the acts adopted by Seimas (decisions) besides the Constitution should also not contradict the laws, it could be agreed that these are well-established issues of the hierarchy of legal sources which are not directly reflected in Article 102(1) and Article 105(1) of the Constitution. Nevertheless, the Constitutional Court, delivering a ruling in one of the first such cases (ruling of February 18, 1998) might have paid some more attention to this theoretical problem and discuss it, as it has done in its ruling of April 2, 2001 concerning the problem of conflicting constitutional and ordinary laws.

The changing doctrine of the Constitutional Court in the light of an unchanged constitutional regulation

This question deserves a separate treatment, especially the issue of the status of the prosecution. It should not be forgotten that the Constitutional Court has amended its understanding of certain Articles of the Constitution, for example the principle of equality enshrined in Article 29 of the Constitution on private and legal persons. [1, p. 120–126]. It is reasonable to presume that doctrinal changes are not avoidable also in the future, and this is determined by the changing circumstances of the legal regulation and ambiguity of certain decisions of the Constitutional Court (for example, ambiguity of certain arguments are apparent in the ruling of November 11, 1998) as well as the changing attitude of the Court itself, conditioned by the rotating composition of the Court.

Possible further developments of the jurisprudence of the Constitutional Court

Possible future reforms of the jurisprudence of the Constitutional Court might include granting of a right to individuals to address the Constitutional Court directly concerning alleged violations of their constitutional rights. It is important to establish a sufficient legal framework for exercise of this right as well as to ensure its effective implementation.

European Convention on Human Rights and its interpretation by the European Court of Human Rights plays an important role in the jurisprudence of the Constitutional Court. Resort to the Convention allows ensuring a uniform content of human rights and the guarantees of their protection. The convention facilitates formation of a uniform concept of human rights in Europe. Consequently its role in the jurisprudence of the Constitutional Court may hardly be overemphasized, as human rights are the values enjoying the highest constitutional protection. Therefore the impact of the European Convention on Human Rights on the jurisprudence of the Constitutional Court might be a separate topic for discussion.

The impact of the Convention would be an interesting topic for analysis from a non-traditional angle: whether the jurisprudence of the Constitutional Court and its rulings might

become an object of investigation for the European Court of Human Rights. An immediate glance at the problem suggests that this is impossible as the jurisprudence of the Constitutional Court is related with an interpretation of the Constitution, unless such interpretation would negate a certain right protected by the Convention on human rights. Thus a question remains whether the interpretation of the Constitution might become a subject of review for the European Court on Human Rights? In a case "*Sussmann v. Germany*" (Judgment of September 16, 1996) an applicant complained concerning the length of proceedings before the German Federal Constitutional Court. Although the Commission was unanimous in finding a violation of Article 6(1) of the Convention, European Court on Human Rights in a split decision (14:6) decided that there was no violation of the Convention. In the opinion of the Court, the role of the Constitutional Court as guardian of the Constitution makes it particularly necessary for a Constitutional Court sometimes to take into account other considerations than the mere chronological order in which cases are entered on the list, such as the nature of a case and its importance in political and social terms. [12].

The present Constitutional regulation in Lithuania does not allow the individual to petition the Constitutional Court directly. The problem of individual rights may become a subject of constitutional review only if a court investigating the cases decides to suspend the proceedings and refer a question of constitutionality of a certain act to the Constitutional Court. Even these circumstances might raise problems of the length of the proceedings due to a large caseload of the Court. However if the Constitution of Lithuania were amended and a person were granted a right to address the Constitutional Court directly concerning his constitutional rights, analogous problems as those in *Sussmann v. Germany* might arise also in Lithuania. Consequently any new reforms of the Constitutional Court require adequate preparation.

Conclusions

A ruling of the Constitutional Court is a particularly important source of constitutional law, having a comparable legal force with the Constitution.

In the practice of the Constitutional Court interpretation of the Constitution is especially important and unavoidable sphere, related with the qualities of the Constitution itself. The need to interpret the Constitution is not necessarily related with its age, because apart from the 'old' constitutions relatively young constitutions also need to be interpreted by courts. If the Constitution is interpreted exclusively by the Constitutional Court, a uniform doctrine of interpretation might be expected, with a dominant strict or liberal method of interpretation. However even this appears to be a relative value having in mind that the changing composition of the Court inevitably affects changes in the doctrine of the Court. A question whether a relative universality of the methods of interpretation of the Constitution may be answered affirmatively only in the sphere of human rights, where the jurisprudence of the European Court of Human Rights determines the minimum standards of interpretation.

New developments in the jurisprudence of the Constitutional Court are determined by two main factors: (1) present legal regulation of the procedure for the execution of powers of the Constitutional Court, i.e. the provisions of the law on the Constitutional Court; (2) the textual problems of the Constitution itself, governing the competence of the Constitutional Court. The new developments of the jurisprudence of the Constitutional Court should be evaluated *inter alia* in light of the circumstances of their introduction, the substantiation of the necessity for their introduction, uniformity as well as the principle of legitimate expectations and proportionality.



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