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## PUBLIC SECURITY IN CONSTITUTIONAL DIMENSION IN LITHUANIA

Ieva SAUDARGAITĖ

Mykolas Romeris University  
Maironio str. 27, LT 44211 Kaunas, Lithuania  
E-mail [ievasaudargaite@mruni.eu](mailto:ievasaudargaite@mruni.eu)  
ORCID: 0009-0000-1409-2442

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**Abstract** This article analyses how the public security is reflected in the constitutional dimension in Lithuania. The analysis is performed by focusing on two main aspects: the entrenchment of public security in the text of the Constitution and the interpretation of the relevant constitutional provisions by the Constitutional Court, i.e., on the official constitutional doctrine related ensuring public security. This article consists of two main parts: the first part deals with the relevant analysis of the text of the Constitution, and the second part analyses the interpretation of the Constitution by the Constitutional Court from two angles – first, what is the role that the Constitution attributes to the public security and then – what impact this role has on the status of the subjects ensuring public security. Following the analysis of the text of the Constitution, the conclusion that the constitutional provisions cover the variety of aspects, that are related to the different fields of ensuring public security, is made. Whereas the analysis of the interpretation of these provisions by the Constitutional Court leads to the conclusion that ensuring public security falls within the mission of the State and public security is one of the most important public interests in our legal system. This special role of public security also implies a special role and status of subjects ensuring public security in our country. It is also concluded that an overview of future constitutional challenges suggests that the questions related to ensuring public security in Lithuania, including not only the general aspects of ensuring this public interest, but, possibly, also the issues relevant to the special status of institutions ensuring the public security and their officials exercising these functions, will continue to remain in the scope of constitutional jurisprudence.

**Keywords:** ensuring public security, public interest, “paramilitary services”, statutory state service.

### Introduction

The need for security is, unquestionably, at the very heart of the needs of every society. However, at some point such need may become even more important, more significant than any other aspect. This is particularly relevant in the context of national emergencies and arising geopolitical threats. Therefore, the challenges of the last few years – the COVID-19 pandemic and the resulting health crisis, the war in Ukraine and the inherent geopolitical crisis – have further reinforced the need for ensuring public security, in Lithuania as well.

Ensuring public security may, of course, require means of different nature. However, the law, as an idea that has become a rule of conduct and has turned into a reality of human behavior<sup>1</sup>, inevitably comes to the limelight as well. Thus, while ensuring public security, we inevitably relay, among others, on legal means. This, consequently, also includes resort to the supreme law – the Constitution, which, being the core of the legal system<sup>2</sup>, embodies the main principles governing, basically, every aspect of our lives. Therefore, the analysis of legal regulation in specific area, essentially, is impossible without the analysis of the context of the Constitution<sup>3</sup>, and ordinary law (i.e., laws and sub statutory regulation) must be assessed based

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<sup>1</sup> Vaišvila, A. (2009) *Teisės teorija*. 3rd edn. Vilnius: Justitia, 2009, p. 60.

<sup>2</sup> Birmontienė, T. et al. (2019) *Konstituciniai ginčai*. Vilnius: Mykolas Romeris university. P. 19.

<sup>3</sup> Ažubalytė, R. ‘Influence of the jurisprudence of the Constitutional Court on the criminal procedure’, *Jurisprudence*, 19(3), 2012, 1059–1078, p. 1062.

on their constitutionality, disclosing all relevant elements of legal regulation<sup>4</sup>. Therefore, being the highest legal power, the Constitution becomes the navigational guidepost of the legality of the entire legal system<sup>5</sup>. Hence, the core principles for ensuring public security are also embodied, primarily at the constitutional level: the Constitution, being the supreme law, sets the requirements for all other legal acts, i.e., including laws and legal acts adopted in the executive level which are of utmost importance when ensuring public security.

In addition, the Constitution plays a special role in guaranteeing the sustainability of legal system due to its adaptability to the changing environment through the interpretation. Being the most stable and at the same time viable law, due to its interpretation (i.e., referred to as jurisprudential constitution<sup>6</sup>), the Constitution acts, essentially, as a guarantor of the sustainability of law in general. It facilitates the adaptation of legal system to the changes of dynamic environment, accordingly – to the developments within the sphere of public security. However, apart from the analysis of certain aspects of ensuring public security<sup>7</sup> and aspects related to the restriction of human rights due to ensuring public security<sup>8</sup>, little attention in academic field is paid to the role of public security in constitutional dimension. Therefore, in the context of current challenges it is important to analyse how public security is reflected in the supreme law, what is its role in the constitutional dimension.

It should be noted in this context that the concept of public security is vast and, depending on different approaches to it, may encompass different aspects. To this end, while referring to the public security in the constitutional dimension, the understanding of this concept as it is embodied in the national legal system is taken into account. Thus, the public security within the means of this article encompasses such fields as the fight against crime, ensuring public order and safety of individuals in the state, guaranteeing reliable control and protection of state border, and ensuring road safety<sup>9</sup>. Accordingly, the public security in this article is understood as part of national security, which includes the protection of the legitimate interests of individual, society and the state against criminal offences and other violations of the law, as well as natural or man-made disasters<sup>10</sup>.

The objective of this article is to analyse how the public security is reflected in the Constitution of the Republic of Lithuania (explicitly and in its interpretation, i.e., in official constitutional doctrine). The article focuses on the analysis of the public security in the

<sup>4</sup> Jarašiūnas, E. 'Aukščiausioji ir ordinarinė teisė: požiūris į Konstituciją pokyčiai', *Jurisprudencija*, 33(25), 2002, 30–41, p. 39.

<sup>5</sup> Mesonis, G. 'The hermeneutic of Constitution: Unity of law and philosophy', *LOGOS*, 58, 2009, 36–43, p.42 [online]. Available at: [http://www.litlogos.eu/L58/logos58\\_036\\_043mesonis.pdf](http://www.litlogos.eu/L58/logos58_036_043mesonis.pdf) (Accessed: 8 May 2023)

<sup>6</sup> For more see, Jarašiūnas, E. 'Jurisprudencinė Konstitucija', *Jurisprudencija. Mokslo darbai*, 12(90), 2006, pp. 24–33.

<sup>7</sup> For example, Novikovas, A. 'Konstitucijos nuostatų detalizavimas pagrindžiant savivaldybių galimybę savarankiškai vykdyti viešosios tvarkos apsaugą', *Jurisprudencija. Mokslo darbai*, 3(105), 2008, pp. 54–59; Melnikas, B. 'Public security institutions in countries of central and Eastern Europe: improvement of the systems of development of public security management specialists', *Jurisprudencija*, 73(65), 2005, pp. 30–38; Tumalavičius, V. (2017) *Viešojo saugumo užtikrinimo teisiniai aspektai lietuvoje: dabarties tendencijos ir procesai, mokslo studija*. Vilnius: Generolo Jono Žemaičio Lietuvos karo akademija.

<sup>8</sup> For example, Junevičius, A. 'Laisvas asmenų judėjimas: apribojimai susiję su viešąja tvarka, visuomenės saugumu ir sveikata', *Public policy and administration*, 12(1), 2013, pp. 133–147.

<sup>9</sup> 'Appendix 'Basics of national security of Lithuania' to the Law on the Basics of National Security of the Republic of Lithuania' [online]. Available at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.A0BAB27D768C/asr> (Accessed: 8 May 2023)

<sup>10</sup> 'Public security development programme 2015–2025, adopted by the Resolution of the Seimas of the republic of Lithuania of 7 May 2015 No XII-1682' [online]. Available at: <https://www.e-tar.lt/portal/lt/legalAct/ea944da0f95d11e4927fda1d051299fb> (Accessed: 8 May 2023)

Constitution by covering two main aspects: the analysis of constitutional provisions related to ensuring the public security and some relevant aspects revealed in constitutional jurisprudence. However, some insights into the certain tendencies within constitutional dimension and possible development of the constitutional doctrine are provided as well.

For the purposes of preparation of this article Constitution, jurisprudence of the Constitutional Court of the Republic of Lithuania and scientific literature were analysed. The constitutional provisions and the jurisprudence of the Constitutional Court were analysed mainly by applying linguistic, systematic and comparative methods.

## I. Public security in constitutional provisions

If we looked into the text of the Constitution, the analysis of it could lead us to the general conclusion that the notion “public security” is somewhat “alien” to the Constitution. Of course, this is true only in the first glimpse and in the sense, that there are no provisions that would at the same time explicitly include the notion “public security” and would be aimed namely at ensuring it.

However, if we investigate the text of the Constitution more thoroughly, we will find such notions as “security of society”, “security of the State”, “public order”, etc. Thus, all these (and many other) notions are to a greater or lesser extent related to various aspects of ensuring public security. This, among others, gives us a basis for talking about the importance of public security at the constitutional level.

All the constitutional provisions related to the different aspects of ensuring public security could be grouped in some way. The following is the most general grouping of constitutional provisions, reflecting divergent aspects related to ensuring public security. Thus, constitutional provisions to a certain extent related to ensuring public security could be grouped as follows:

*(i) Provisions embodying aspects of public security as legitimate aim for restricting certain human rights and fundamental freedoms.*

For example, Article 32 of the Constitution, which embodies right of free movement and right to choose the place of living of the citizens, states: “Citizens may move and choose their place of residence in Lithuania freely and may leave Lithuania freely. These rights may not be restricted otherwise than by law when this is necessary for the protection of the security of the State or the health of people, or for the administration of justice. Citizens may not be prohibited from returning to Lithuania.” Thus, inter alia the security of the state, as well as health of the people are seen as a legitimate aim for restricting right of free movement.

Another example would be Article 36, which embodies the right to assemble. It states: “Citizens may not be prohibited or hindered from assembling unarmed in peaceful meetings. This right may not be limited otherwise than by law and only when this is necessary to protect the security of the State or society, public order, the health or morals of people, or the rights or freedoms of other persons.” Thus, among others, public order, as well as the security of the State and society constitute legitimate aim for restricting right to assemble.

To sum up, the security of the State or society, as well as public order under the Constitution (certain constitutional provisions) constitute legitimate aim for restricting certain human rights and freedoms. In other words, these aspects related to public security constitute a public interest in the context of restricting them.

*(ii) Provisions related to the constitutional requirement to try to ensure the security of each person and all society against criminal attempts.*

Such constitutional provisions include aspects related to criminal procedure, as well as criminal justice. These provisions are inextricably linked to ensuring the security of the individual, as well as the society as whole. For example, the Paragraph 1 of the Article 31 of the Constitution establishes the presumption of innocence (“A person shall be presumed innocent until proved guilty according to the procedure established by law and declared guilty by an effective court judgment”) which is a core principle, that is applied during the whole procedure while investigating the crime, prosecuting a person, etc.

Another example could be the Paragraph 6 of the Article 31 of the Constitution which embodies the right of every person suspected of committing a crime or accused of committing it to defence as well as to an advocate from the moment of his apprehension or first interrogation. It may seem that these provisions are not directly linked to ensuring public security. However, the right to defence, as well as right to an advocate are intrinsically linked, among other things, to the process of investigating crimes, accordingly, they are directly related to ensuring public security.

Thus, as it may be seen from the provided example, these constitutional provisions also cover aspects related to ensuring public security; they also aim at guaranteeing the security of every individual, as well as of the society.

*(iii) Provisions that entrench the powers of the state institutions implementing the state authority in the field of regulating questions related to ensuring public security.*

For example, Item 1 of Article 94 embodies the powers of the Government of the Republic of Lithuania: it establishes the powers to manage national affairs, protect the territorial inviolability of the Republic of Lithuania, and guarantee state security and public order.

These constitutional provisions showcase the example of functions related to ensuring public security that fall within the competence of institutions implementing state powers in Lithuania. Such functions, as it may be seen from the provided example, are typically described in generic terms and are related to implementation of general commitment of the state to ensure public security.

*(iv) Provisions referring to persons performing functions related to ensuring public security.*

For the sake of accuracy, it should be noted that one article of the Constitution – Article 141 of the Constitution could be attributed to this group. Thus, one article which mentions the police, and the interior, non-commissioned officers, re-enlistees, and other paid officials of paramilitary, i.e., it mentions those persons who, taking into account the concept of public security, participate in ensuring public security in our country.

Under the Article 141 of the Constitution the mentioned persons (together with other groups that are mentioned in these provisions) are prohibited from becoming Members of the Seimas, members of municipal councils, or municipal mayors, as well as to hold any elective or appointive office in the civil State Service or participate in political activities.

Hence, these constitutional provisions establish certain aspects of specific status of the mentioned persons, that perform functions related to ensuring public security. It should be noted in this regard, that the Constitution essentially does not impose an analogous or similar prohibition on other persons performing other functions. In other words, no other official or other persons performing specific functions in the state are imposed a prohibition to perform certain functions. These special constitutional provisions, therefore, give rise to the specificity of legal status of the mentioned persons implementing functions related to ensuring public security.

The given possible grouping of constitutional provisions, which are inherently linked to ensuring public security, is not a definite one. Nonetheless, this (conditional) classification allows us to see in the Constitution the variety of aspects, that are related to the different fields of ensuring public security. It could be, nonetheless, stated, that these constitutional provisions are related to the means of guaranteeing public security in the complex area comprising national, societal, and individual levels.

However, the Constitution, like all legislation, must be interpreted<sup>11</sup>. It is only through interpretation, that the stability and at the same time – the viability of the Constitution can be guaranteed<sup>12</sup>. Thus, although the explicit constitutional regulation related to ensuring public security may seem somewhat scarce, any conclusions could be made only following the interpretation of the constitutional provisions.

## II. Public security in official constitutional doctrine

In this context it should be stressed that under the Constitution, only the Constitutional Court is empowered to construe the Constitution officially<sup>13</sup>. It is done in constitutional justice cases, i.e., by deciding whether laws (certain other legal acts) are not in conflict with the Constitution (certain other higher ranking legal acts). Interestingly, the interpretation of the constitution is a process, the end and qualitative completeness of continuous which can only be associated with the permanence of the validity of the constitution itself<sup>14</sup>. Thus, the official constitutional doctrine (the interpretation of constitutional provisions) is developed by the Constitutional Court “case by case”<sup>15</sup>.

As the Constitutional Court has stated, such development involves, not only the disclosure of relevant new aspects of the constitutional legal regulation and supplement of the conception of the constitutional provisions provided in previously adopted acts of the Constitutional Court with new elements (fragments), but also reinterpretation of the official constitutional doctrinal provisions formulated previously when the official constitutional doctrine is corrected<sup>16</sup>. In other words, together with the development of official constitutional doctrine the content of the constitutional provisions changes as well, the extent of the changes depends on the interpretation of the constitutional provisions provided by the Constitutional Court. Therefore, the content of constitutional provisions is never static, it always develops and is adapted to the ever-changing circumstances. In academic level this phenomenon is even called the “jurisprudential constitution”, i.e., as the category that reflects the idea of a living, evolving, functioning constitution<sup>17</sup>.

It should be noted in this context that the content of the mentioned constitutional provisions related to ensuring public security, revealed in the official constitutional doctrine, is, accordingly, also ever changing. In addition, the mentioned specificity of the constitutional interpretation, i.e., the fact that is ever-changing and evolving, also determines that the official constitutional doctrine, *inter alia* related to ensuring public security, is particularly broad.

<sup>11</sup> Sinkevičius, V. ‘Konstitucijos interpretavimo principai ir ribos’, *Jurisprudencija*, 67(59), 2005, 7–19, p. 7.

<sup>12</sup> Birmontienė, T. et al. (2019, pp. 41–45).

<sup>13</sup> The ruling of the Constitutional Court of the Republic of Lithuania of 30 May 2003. Official Gazette, 2003, No. 53-2361.

<sup>14</sup> Mesonis (2009, p. 42).

<sup>15</sup> The ruling of the Constitutional Court of the Republic of Lithuania of 28 March 2006. Official Gazette, 2006, No. 36-1292.

<sup>16</sup> The ruling of the Constitutional Court of the Republic of Lithuania of 28 March 2006.

<sup>17</sup> Jarašiūnas, (2006, pp. 24–33).



Consequently, the analysis of public security in constitutional dimension could not be thoroughly performed in one article and should be limited only to the most general aspects. In other words, we are inevitably required to limit our analysis of official constitutional doctrine only some aspects related to ensuring public security.

Hence, this part of the article presents two main aspects related to ensuring public security: provisions of official constitutional doctrine related to the role of public security as a public interest, as well as those provisions of the official constitutional doctrine that reveal the impact of such special role of public security onto the status of state institutions and officials, implementing functions in ensuring public security.

## II.1. The role of public security as of a public interest in the Constitution

Generally, in academic literature the public security is associated with the state, its functions, and, inseparably, with its relationship with the individual, i.e., it is determined as the relevant factors to protect citizens and the state and to ensure the safety of persons and property security<sup>18</sup>. Whereas the state, whose power covers all its territory, is seen as a political organisation of all society, whose mission, its obligation under the Constitution is to ensure human rights and freedoms and to guarantee the public interest<sup>19,20</sup>. Thus, the functioning of the state is inextricably linked with the implementation of the public interest. In addition, the implementation of the public interest as the interest of society is one of the most important conditions of the existence and development of society itself<sup>21</sup>.

Under the Constitution each public interest, as emphasised Constitutional Court, reflects and expresses the fundamental values which are entrenched in, as well as protected and defended by the Constitution, such as openness and harmony of society, the rights and freedoms of the person, the supremacy of law, etc.<sup>22</sup> Thus, the public interest is understood in a broader sense than just as the interest of the majority, and that society is understood as a complex of different groups with different interests<sup>23</sup>. Therefore, not any legitimate interest of a person or a group of persons is regarded as a public interest; it has to reflect and express the fundamental values consolidated, protected, and defended by the Constitution<sup>24</sup>. Consequently, while determining what role is attributed to the public security (elements thereof) in the Constitution, we should analyse if it (elements thereof) is related to public interest.

The following aspects related to guaranteeing the public interest and related to ensuring public security could be distinguished as an example in this respect:

*(i) Aspects related to ensuring the security of society and guaranteeing public order.*

<sup>18</sup> Kalašnykas, R., Deviatnikovaitė, I. 'Kai kurių bendrųjų Europos Bendrijos teisės principų taikymo ypatumai administruojant viešąjį saugumą', *Jurisprudencija. Mokslo darbai*, 4(94), 2007, 44–53, p.45.

<sup>19</sup> The ruling of the Constitutional Court of the Republic of Lithuania of 30 December 2003. Official Gazette, 2003, No. 124-5643.

<sup>20</sup> The ruling of the Constitutional Court of the Republic of Lithuania of 15 May 2007. Official Gazette, 2007, No. 54-2097.

<sup>21</sup> The ruling of the Constitutional Court of the Republic of Lithuania of 6 May 1997. Official Gazette, 1997, No. 40-977. The ruling of the Constitutional Court of the Republic of Lithuania of 13 May 2005. Official Gazette, 2005, No. 63-2235. The ruling of the Constitutional Court of the Republic of Lithuania 21 September 2006. Official Gazette, 2006, No. 102-3957.

<sup>22</sup> The ruling of the Constitutional Court of the Republic of Lithuania of 21 September 2006.

<sup>23</sup> Beliūnienė, L. et al. (2015) *Viešojo intereso atpažinimo problema Lietuvos teisėje: kriterijai ir prioritetai*. Vilnius: Teisės institutas. P. 253.

<sup>24</sup> The ruling of the Constitutional Court of the Republic of Lithuania of 21 September 2006.

It is generally stated in the official constitutional doctrine that under the Constitution, institutions of state authority and administration have a duty to ensure safety of the society and public order, to protect individuals from attempts against their lives or health, to protect human rights and freedoms<sup>25</sup>. This is the most general provision which reveals the importance, among others, of the aspects of ensuring public security. The content of the mentioned general duty of the state authorities is revealed in constitutional jurisprudence.

For example, in one of the constitutional justice cases the Constitutional Court elaborated its doctrine related to Article 36 of the Constitution which embodies the right to assemble in peaceful meetings. It was stated that this freedom may be implemented only without violating other constitutional values. Therefore, although organisers of meetings may freely choose the place, time, purpose, and manner of meetings, they must also take measures so that the meeting would not intimidate the security of the State or society, public order, people's health or morals, or the rights and freedoms of other persons. It is for the institution or official adopting decisions concerning the coordinated place, time, and form of the meeting to ascertain if the meeting will not violate the mentioned constitutional values.<sup>26</sup>

This example also proves that guaranteeing *inter alia* public order, which is one of the fields of public security, is an important public interest.

*(ii) Aspects related to ensuring the security of each person and all society from criminal attempts.*

The respective official constitutional doctrine is based, among others, on the stipulation that a just and harmonious civil society and state under the rule of law is decided by security of every individual and society overall from criminal attempts. In this context the Constitutional Court has emphasised more than once, that it is for the state to ensure such security – it is one of the priorities of the state. Whereas one of the types of measures in this respect are measures that help to create preconditions for restraining crime as a social phenomenon<sup>27</sup>. In addition, the mentioned obligation of the state requires defining criminal acts and establishing criminal liability for them by the law, as well as the duty of legislature to regulate criminal procedure relations (i.e., relations connected with the disclosure and investigation of criminal acts and with the consideration of criminal cases)<sup>28</sup>. Thus, the relevant official constitutional doctrine involves in this respect various aspects related to the restraint, investigation, and solution of crimes, as well as other measures for guaranteeing public order, etc.

For example, the Constitutional Court has held that under the Constitution, the restraint, investigation, and solution of crimes is a public interest, therefore, to ensure the normal activities of the institutions of law and order that are performing these functions, the necessary information must be supplied gratis<sup>29</sup>. Whereas the clarity of decisions adopted during a pretrial

<sup>25</sup> The ruling of the Constitutional Court of the Republic of Lithuania of 25 January 2013. Official Gazette, 2013, No. 11-520. The ruling of the Constitutional Court of the Republic of Lithuania of 5 June 2020. Register of Legal Acts, 2020-12-31, No. 29221.

<sup>26</sup> The ruling of the Constitutional Court of the Republic of Lithuania of 7 January 2000. Official Gazette, 2000, No. 3-78.

<sup>27</sup> The ruling of the Constitutional Court of the Republic of Lithuania of 9 December 1998. Official Gazette, 1998, No. 109-3004.

<sup>28</sup> The ruling of the Constitutional Court of the Republic of Lithuania of 26 June 2017. Register of Legal Acts, 2017-06-26, No. 10749.

<sup>29</sup> The ruling of the Constitutional Court of the Republic of Lithuania of 19 September 2002. Official Gazette, 2002, No. 93-4000.

investigation and the substantiation of such decisions with legal arguments is an important guarantee, *inter alia*, of the right to fair legal proceedings and the right to judicial protection<sup>30</sup>.

Thus, the necessity to ensure security of each person and all society from criminal attempts is seen in the official constitutional doctrine as one of the aspects of the mission of the state. Therefore, restraint, investigation and solution of crimes are the fields that are inseparable from the implementation of the public interest.

(iii) *Aspects related to ensuring road safety.*

The Constitutional Court has emphasised that it is a public interest to ensure traffic safety, *inter alia*, road traffic safety. It was then explained that this leads to certain requirements for legislation: the established traffic safety requirements have to be necessary to ensure public order and the security of society, human life and health, including appropriate requirements for road users, etc. For example, under the Constitution in order to ensure road safety, the legislature may establish such a legal regulation on the granting of the right to drive vehicles under which this right would not be granted for a certain period of time to persons who have committed the most serious violations of traffic rules<sup>31</sup>.

The provided example proves that, under the Constitution, ensuring road safety – one of the fields of public security, which also implies the implementation of public interest.

Thus, the given examples from the official constitutional doctrine prove that ensuring security of the society, individuals from criminal attempts, as well as guaranteeing public order constitute the very essence of the role of the state. This means, of course, that both – ensuring security of the society, individuals from criminal attempts and guaranteeing public order, as well as ensuring road safety, constitute a very important public interest. It may be consequently concluded that ensuring public security is required by the whole society.

It should be added in this respect that other links between the protection of the public interest and ensuring public security could also be implied from the official constitutional doctrine. However, the provided examples, obviously, affirm that in general ensuring public security is at the very essence of the state – is inextricably linked to its main mission (as of political organisation of all society) and it constitutes an important public interest.

In this context we could wonder, why the conclusion that public security (its aspects) constitutes public interest is so important? Primarily, this fact means that the need to ensure public security must be taken into account when legally regulating various spheres of social life. For example, the Constitutional Court in one of constitutional justice cases has concluded (while interpreting the provision of Paragraph 3 of the Article 46 of the Constitution “the State shall regulate economic activity in such a way that it serves the general welfare of the nation”) that the general welfare of the nation is not possible without the security of the State and of the society, the maintenance of which is a prerequisite for the achievement of the welfare of the nation; the security of the State and of society is a constitutionally important objective, a public interest which must be respected by the State when regulating economic activity in a way that serves the well-being of the nation. Therefore, as it was emphasised, the legislator must establish a specific legal framework for economic sectors (economic entities or objects) important for state and public security, *inter alia*, specific requirements (conditions) for

<sup>30</sup> The ruling of the Constitutional Court of the Republic of Lithuania of 17 February 2016. Register of Legal Acts, 2016-02-17, No. 2985.

<sup>31</sup> The ruling of the Constitutional Court of the Republic of Lithuania of 24 July 2020. Register of Legal Acts, 2020-07-24, No. 16411.



economic activities to prevent threats to state or public security<sup>32</sup>. In this particular case, for example, the Constitutional Court held that the legal regulation under which the investor, once declared to be non-compliant with the interest of national security, would be considered permanently not to be in the national security interest (irrespective of any factual circumstances) is in conformity with the Constitution.

Thus, as it may be seen from the official constitutional doctrine, the aspects of public security, that constitute the public interest, may require setting certain limits on the exercise of various human rights and freedoms. Therefore, the public security in this respect may have impact on legal regulation in various fields. Only by respecting such special role of public security, the security of society and individuals could be guaranteed.

Additionally, the fact that ensuring public security constitutes public interest also has an impact on the status and functions of the authorities implementing this public interest, as well as on the status, functions and guarantees of persons that help to implement it. Given the large volume of aspects in this respect, as well as their specificity, the relevant official constitutional doctrine is presented and analysed separately in another section of this article.

However, before moving towards the analysis of the mentioned aspects, it should be additionally noted, that the questions related to ensuring public security are at the core of constitutional jurisprudence. In the past year the Constitutional Court has dealt various cases directly or indirectly related to ensuring public security. For example, constitutional justice cases related to the right of the National Centre for Public Health to assign binding measures to employees for the control of communicable diseases in humans<sup>33</sup>, to the irremovable reasons threatening national security interests<sup>34</sup>, to entrusting the Government with the task of identifying areas where workers who have been checked for the presence of a communicable disease are permitted to work and those who have not undergone a health check are suspended from work<sup>35</sup>.

In addition, the questions (more or less) related to ensuring public security remain on the table of the Constitutional Court, prompting for further constitutional developments in this sphere. This conclusion is affirmed by the fact that Constitutional Court is preparing to hear more cases concerning certain aspects related to ensuring public security. For example,<sup>36</sup> cases related to the constitutionality of temporary accommodation of an asylum seeker in the Foreigners Registration Centre<sup>37</sup>, to the constitutionality of the National Certificate<sup>38</sup>, to the constitutionality of restrictions on the freedom of movement of persons during the period of quarantine<sup>39</sup>. Therefore, we may conclude that, in general, aspects related to ensuring public security will remain a focal point in the constitutional jurisprudence, prompting for further developments of the respective official constitutional doctrine.

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<sup>32</sup> The ruling of the Constitutional Court of the Republic of Lithuania of 22 September 2022. Register of Legal Acts, 2022-09-22, No. 19372.

<sup>33</sup> The ruling of the Constitutional Court of the Republic of Lithuania of 21 June 2022. Register of Legal Acts, 2022-06-21, No. 13291

<sup>34</sup> See the ruling of the Constitutional Court of the Republic of Lithuania of 22 September 2022.

<sup>35</sup> See the ruling of the Constitutional Court of the Republic of Lithuania of 12 October 2022. Register of Legal Acts, 2022-10-12, No. 20749.

<sup>36</sup> *List of petitions*. The official website of the Constitutional Court [Online]. Available at: <https://lrkt.lt/en/petitions/list-of-petitions/371> (Accessed: 8 May 2023)

<sup>37</sup> Petition No. 1A-56/2022, case No. 10-A/2022.

<sup>38</sup> Petition No. 1B-10/2022, case No. 9/2022; petition No. 1B-18/2022, case No. 18/2022.

<sup>39</sup> Petition No. 1A-81/2022, case No. 11-A/2022; petition No. 1A-82/2022, case No. 12-A/2022; petition No. 1A-83/2022, case No. 13-A/2022.

## II.2. The impact of a special role of public security on the status of the subjects ensuring it

This specific role of public security, as of a public interest, also has an impact on the status of subjects (institutions and persons) implementing it. As it was already shown in the first section of this article, the constitutional provisions establish certain aspects of specific status of certain persons, that perform functions related to ensuring public security. Thus, this section of this article is designated to the analysis of the relevant official constitutional doctrine related to the specificity of the status of certain persons, performing functions in ensuring public security.

The Constitutional Court has emphasised, that in order to guarantee the public interest of entire national community, the state must ensure the existence and implementation of the functions of public administration, as well as carrying out of public services<sup>40</sup>. In other words, under the Constitution, in order to guarantee public interest special system of institutions must be established. These institutions exercise specific functions related to implementation of public interest, *inter alia* to ensuring public security.

In this context it should be noted, that all state institutions could be divided into several groups<sup>41</sup>: (i) state institutions expressly specified in the Constitution (for example, the State Defence Council, the Commander of the Armed Forces, the Office of the Prosecutor General, security service); (ii) state institutions, which according to the Constitution, must be established by the law (for example, specialised courts); (iii) state institutions that need to be established for implementing state governance, administering national affairs, and ensuring the performance of various state functions – state institutions must be organised in order to perform such functions, although their establishment is not explicitly provided for in the Constitution.

The Constitutional Court has noted that due to the content of each state function and the circumstances of performing such functions state institutions performing these functions differ in terms of their status and the character of their activity<sup>42</sup>. The Article 141 of the Constitution, which refers to, among others, the officers of the police, and the interior, non-commissioned officers, re-enlistees, and other paid officials of paramilitary and security services, is considered also to determine state service<sup>43</sup>. It is, accordingly, emphasised, that some functions of the state are fulfilled, primarily or mainly, through civil state (and municipal) institutions, whereas others are performed through military and/or paramilitary state institutions<sup>44</sup>.

In this regard the constitutional notion “paramilitary services” is interpreted in the official constitutional doctrine as including the statutory state institutions that do not belong to the national defence system; these institutions include police authorities, the bodies of interior service and security service as well as the other state institutions the activity of which, taking into account their mission and functions, have to be organised on the basis of statutory relations<sup>45</sup>. Actually, if we compare this constitutional notion with the understanding of public security which is referred to in this article (i.e., as mentioned, the public security in this article is understood as part of national security, which includes the protection of the legitimate

<sup>40</sup> The ruling of the Constitutional Court of the Republic of Lithuania of 13 December 2004. Official Gazette, 2004, No. 181-6708.

<sup>41</sup> The ruling of the Constitutional Court of the Republic of Lithuania of 13 December 2004.

<sup>42</sup> The ruling of the Constitutional Court of the Republic of Lithuania of 27 February 2012. Official Gazette, 2012, No. 26-1200.

<sup>43</sup> The ruling of the Constitutional Court of the Republic of Lithuania of 4 November 2015. Register of Legal Acts, 2015-11-04, No. 17587.

<sup>44</sup> The ruling of the Constitutional Court of the Republic of Lithuania of 24 September 2009. Official Gazette, 2009, No. 115-4888.

<sup>45</sup> The ruling of the Constitutional Court of the Republic of Lithuania of 4 November 2015.

interests of individual, society and the state against criminal offences and other violations of the law, as well as natural or man-made disasters<sup>46</sup>), we will see that the understanding applied in this article matches the one implemented by the ordinary law, and reveals essential aspects of the constitutional notion of “paramilitary services”. Thus, when we talk about ensuring public security, we primarily refer to the paramilitary service and persons implementing functions within this sphere.

It should be noted in this respect, that according to the official constitutional doctrine, military, paramilitary, or security service is regarded as separate from civil service. Accordingly, there is, under the Constitution, a differentiated concept of civil state institutions and military state institutions, which lead to a differentiated regulation of relations connected with the activities of civil state institutions and military and paramilitary state institutions, as well as for different legal status of persons working in civil, military, and paramilitary state institutions that is distinguished by certain particularities<sup>47</sup>.

Thus, based on this official constitutional doctrine, various institutions could be established in order to guarantee public interest. The system of state institutions comprises very diverse state institutions, whereas their status and powers are dependent on the functions performed by the state and, accordingly, on the powers granted to particular institutions. The differentiation of state institutions leads, accordingly, to the differentiation of the status of persons helping to carry out the functions, attributed to particular state institution. Therefore, it implies different types of the state service, which is generally understood as a professional activity of state servants. For the purpose of this article paramilitary service is to be considered the most related to the implementation of public interest within the sphere of ensuring public security.

Under the Constitution, the constitutional purpose of paramilitary service is related with areas that are important to the security of the state and society (guarding and control of the state border, ensuring the public order, investigation of crimes, protection of state secrets, etc.)<sup>48</sup>. According to the Constitutional Court, the paramilitary service including the statutory state institutions are the police authorities, the bodies of interior service and security service as well as the other state institutions. Under the Constitution, the activity of these institutions has to be organised on the basis of statutory relations.<sup>49</sup> Thus, according to the official constitutional doctrine the specific role of the paramilitary service, presupposes special functions of persons implementing public interest within this sphere. Whereas the specificity of these functions requires specific status to be attributed to persons implementing them.

This specific status in the official constitutional doctrine involves various aspects. Primarily, as mentioned, it presupposes, the statutory relations, as well as strict hierarchical subordination. The Constitution also establishes special requirement *inter alia* for officials of state institutions to comply with the high standards required by the law, requirements of loyalty to the State, as well as of an impeccable reputation<sup>50</sup>. In addition, the statutory concept of the state service determines such special features of statutory service as its special legal regulation by statutes, such special requirements for officials of state statutory institutions that are related

<sup>46</sup> ‘Public security development programme 2015-2025, adopted by the Resolution of the Seimas of the republic of Lithuania of 7 May 2015 No XII-1682’.

<sup>47</sup> The ruling of the Constitutional Court of the Republic of Lithuania of 4 November 2015.

<sup>48</sup> The ruling of the Constitutional Court of the Republic of Lithuania of 27 February 2012.

<sup>49</sup> The ruling of the Constitutional Court of the Republic of Lithuania of 4 November 2015.

<sup>50</sup> The ruling of the Constitutional Court of the Republic of Lithuania of 18 April 2019. Register of Legal Acts, 2019-04-18, No. 6411.

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to their education, age, state of health, etc<sup>51</sup>. The specificity of statutory state service is also represented by the fact that officials of statutory service are attributed specific powers (for example, to give certain mandatory instructions to persons outside their authority), special social and other guarantees<sup>52</sup>.

Thus, due to the different functions that are performed by paramilitary institutions, the status of persons helping to exercise such functions is also different from the status of other officials of state institutions. In addition, the functions attributed to various paramilitary institutions differ as well. Therefore, the status of officials working in diverse paramilitary institutions differs as well (especially, as to their powers and requirements for the officials), i.e., even within the system of paramilitary institutions the status of officials of these institutions is not homogeneous. The status of officials of particular paramilitary institution (institutions) should therefore, if needed, be exhaustively examined separately. Nonetheless, all paramilitary institutions are mandated to implement public interest in the field of ensuring public security. The status of all officials of paramilitary institutions, accordingly, is similar in that they all contribute to ensuring public security, i.e., to implementing one of the most important public interests in our country.

In this context it should be additionally noted that although the special status (though diverse) of officials of paramilitary institutions has been established since the restoration of the independence of Lithuania, various aspects of this status still tend to be the subject of constitutional jurisprudence. The Constitutional Court has already dealt more than once with the questions, concerning specific status of the officials of statutory state institutions, as well as other officials exercising functions in the public security field. For example, in the year 2022 the Constitutional Court has examined the constitutional justice cases related to the compensation for losses of the State pensions of officials and servicemen<sup>53</sup>, to the prohibition of being a statutory civil servant for a person exempted from criminal liability<sup>54</sup>, and to the additional annual leave for officials bringing up a child(ren) up to the age of 14 alone<sup>55</sup>.

In conclusion, obviously, not only the questions (more or less) directly related to ensuring public security, but also the ones related to special status of the officials whose function is to help ensure public security, remain on the table of the Constitutional Court, prompting for further constitutional developments in this sphere. It is, therefore, safe to assume, that that issues related to the status of officials of statutory state institutions might continue to remain in the agenda of the Constitutional Court.

## Conclusions

The analysis of the constitutional provisions related to ensuring public security and their interpretation in the official constitutional doctrine, allows certain generalisations to be made regarding the role of public security in the constitutional dimension.

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<sup>51</sup> The ruling of the Constitutional Court of the Republic of Lithuania of 18 April 2012. Official Gazette, 2012, No. 47-2309.

<sup>52</sup> The ruling of the Constitutional Court of the Republic of Lithuania of 4 November 2015.

<sup>53</sup> See the ruling of the Constitutional Court of the Republic of Lithuania of 17 June 2022. Register of Legal Acts, 2022-06-17, No. 13127.

<sup>54</sup> See the ruling of the Constitutional Court of the Republic of Lithuania of 20 October 2022. Register of Legal Acts, 2022-10-20, No. 21298.

<sup>55</sup> See the ruling of the Constitutional Court of the Republic of Lithuania of 30 November 2022. Register of Legal Acts, 2022-11-30, No. 24335.

1. The public security is an integral and indispensable part of constitutional regulation. Although not all aspects of public security are explicitly referred to in the Constitution, various aspects related to ensuring it are explicitly referred to in the supreme law. Whereas the analysis of the official constitutional doctrine affirms that both – ensuring security of the society, individuals from criminal attempts and guaranteeing public order, as well as ensuring road safety, constitute a very important public interest. Thus, under the Constitution, ensuring public security (in the various fields) falls within the State mission. Accordingly, the public security (aspects thereof) constitutes one of the main public interests in our legal system.

2. The special place of public security in the constitutional dimension is also reflected by the specificity of the role of those implementing it. Due to the particular importance of public security, as of public interest, the institutions exercising functions related to ensuring public security, as well as their officials, have special status, as compared, respectively, to other state institutions and officials. Under the Constitution implementation of public interest in the field of ensuring public security is, primarily, linked to “paramilitary services” and persons implementing functions within this sphere. Although the status of officials in the system of paramilitary institutions is not homogeneous, at the same time their status similar in that they all contribute to ensuring public security, i.e., to implementing one of the most important public interests in our country. In addition, their status is generally related (though may be to a different extent) to strict hierarchical subordination, it is regulated by the special statutes, it implies compliance with various additional requirements (such as of loyalty to the State, an impeccable reputation, special education, state of health), attribution of specific powers, special social and other guarantees.

3. An overview of future constitutional challenges suggests that the questions related to ensuring public security in Lithuania, including not only the general aspects of ensuring this public interest, but, possibly, also the issues relevant to the special status of institutions ensuring the public security and their officials exercising these functions, will continue to remain in the scope of constitutional jurisprudence. However, the direction of the relevant development of official constitutional doctrine can only be identified after the analysis of the new aspects of jurisprudential development.

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