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**THE LIMITS
OF CONSTITUTIONAL REVIEW
OF THE ORDINARY COURT'S DECISIONS
IN CONSTITUTIONAL COMPLAINT
PROCEEDINGS**

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REPORT

**THE PERSPECTIVES OF INTRODUCING THE CONSTITUTIONAL
COMPLAINT IN THE REPUBLIC OF LITHUANIA**

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1. Introduction

In Europe, the general tendency of the last decades of the twentieth century was the introduction of constitutional control mechanisms into new democracies. Individual petitions were introduced in many countries, even those countries, which at first didn't do that, later introduced the institute of individual petition. Only minority of countries with centralized systems of constitutional control have not introduced individual petitions, Lithuania among them.

In Lithuania the constitutional control system was introduced with the adoption of a new Constitution by referendum in 1992. The Constitutional Court started to function in 1993. From the very beginning of constitutional control individuals had no right to apply directly to the Constitutional Court, and most of those who consider that their constitutional rights are violated reach the Constitutional Court through ordinary courts. This indirect way of being heard at the Constitutional Court doesn't satisfy the citizens and proposals to bring in individual petitions have already taken place and discussions have started, though neither the type of suggested individual petitions, nor the requirements for the petitions and admission thereof have been decided. But the main trend of political discussions, some proposals of lawyers and the public opinion show that it is only a matter of time when these ideas will be implemented and corresponding draft proposals will be presented to the *Seimas* (Parliament). The very possibility for citizens individually to address the constitutional court directly challenge the constitutionality of legal acts serves democracy and strengthens the civil society.

2. The competence of the Constitutional Court

The competence of the Constitutional Court of Lithuania is established in the Constitution of the Republic of Lithuania, Chapter VIII "The Constitutional Court", and in the Law on the Constitutional Court of Republic of Lithuania adopted by the parliament in 1993. Under the provisions of the Constitution (Articles 102, 105) the Constitutional Court shall decide whether the laws and other acts of the *Seimas* are not in conflict with the Constitution and whether acts of the President of the Republic and the Government are not in conflict with the Constitution or laws. The Constitutional Court shall present conclusions: whether there were violations of election laws during elections of the President of the Republic or elections of members of the *Seimas*; whether the state of health of the President of the Republic permits him to continue to hold office; whether international treaties of the Republic of Lithuania are not in conflict with the Constitution; whether concrete actions of members of the *Seimas* and State officials against whom an impeachment case has been instituted are in conflict with the Constitution.

The *Seimas*, not less than 1/5 of all the members of the *Seimas*, the President of the Republic, the Government, and the courts, shall have the right to apply to the Constitutional Court concerning the acts specified in the Constitution (Article 106). The courts could apply to the Constitutional Court in all cases, concerning mentioned legal acts, but they have no right to address for conclusions. Under the Constitution, a law (or part thereof) 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 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 (Article 107).

3. Possible ways of introduction of the individual complaint

There could be more than one way to introduce the individual complaint institute into the Lithuanian legal system. The most traditional and the most probable way is to make an amendment to the Constitution and another possible way is to introduce this right through the power of the Constitutional Court to interpret the Constitution officially.

3.1. Amendment of the Constitution: the most possible way to introduce individual complaint

The most traditional way of introducing the constitutional complaint into the Lithuanian legal system could be making an amendment to the Constitution. The Constitution regulates the procedure of amending the Constitution, which is established in Chapter XIV "Alteration of the Constitution" of the Constitution. Article 147 of the Constitution states that either not less than a group of 1/4 of the members of the *Seimas*, or not less than 300,000 voters shall have the right to present to the *Seimas* a proposal to alter or supplement the Constitution of the Republic of Lithuania; during a state of emergency or martial law, the Constitution may not be amended. The Constitution establishes differential system of the amendment of the Constitution, some articles or provisions of the Constitution could be changed only by referendum. But amendment of the articles that are part of the Chapter designed for the regulation of the Constitutional Court could be changed by the parliament. Article 148 (Paragraph 3) of the Constitution provides that amendments of the Constitution must be considered and voted upon in the *Seimas* twice; there must be a period of not less than three months between these votes; the draft law on the alteration of the Constitution shall be deemed adopted by the *Seimas* if, in each of the votes, not less than 2/3 of all the members of the *Seimas* vote in favour thereof. The amendment to the Constitution which is not adopted by the *Seimas* may be presented repeatedly to the *Seimas* for reconsideration not earlier than one year after it was initially rejected (Paragraph 4 of Article 148). The Constitution (Article 149) also states, that the President of the Republic shall sign the adopted law on an alteration of the Constitution and officially promulgate it within 5 days. If the President of the Republic does not sign and promulgate such a law during the indicated time, this law shall come into effect when the President of the *Seimas* signs and promulgates it. The law on an alteration of the Constitution shall come into effect not earlier than one month after the adoption thereof.

The amendment of the Constitution through the introduction of a new regulation has to be done bearing in mind that the basic grounds for the submitting petitions to the Constitutional Court have to be indicated. We can discuss whether this right could probably be given not only for citizens, and we can assume that such right of legal persons could also be discussed. As mentioned before, there are no prepared drafts on this issue, so open discussions are taking place as to what scope of this right might be, and whether citizens could have a right to challenge the decisions of the ordinary courts that intervene in their fundamental rights etc.

3.2. The legal power of the jurisprudence of the Constitutional Court as an instrument to introduce the individual complaint

Another way of recognition of the right of an individual to address the Constitutional Court could be interpretation of respective provisions of the Constitution through the power of the Constitutional Court to interpret officially the Constitution.

The decisions of the Constitutional Court on issues ascribed to its competence by the Constitution are final and not subject to appeal. According to the Constitution (Article 107), after the Constitutional Court recognises a law (or part thereof), or other act (or part thereof) of the Seimas, act of the President of the Republic, act (or part thereof) of the Government to be in conflict with the Constitution, these acts may not be applied from the day of promulgation of the decision of the Constitutional Court. The institutions which had issued a corresponding act – the Seimas, the President of the Republic, and the Government – are prohibited from repeatedly establishing the legal regulation which has been recognised to be in conflict with the Constitution, by adopting corresponding laws and other legal acts afterwards. The legal regulation established by Paragraphs 1 and 2 of Article 107 of the Constitution also means that the power of the decision (ruling) of the Constitutional Court may not be overcome by a repeated adoption of laws or other acts of the Seimas, acts of the President of the Republic, and acts of the Government.

It should also be noted that, under the Constitution, the decisions (rulings) of the Constitutional Court are obligatory to everyone. Acts of the Constitutional Court are a source of law. Under the Constitution the Constitutional Court has the power to declare acts of legislative and executive power as being in conflict with the Constitution and thus to eliminate a possibility to apply them.

In the ruling of 30 May 2003 Constitutional Court *expressis verbis* consolidated the function and status of itself as of the only one official interpreter of the Constitution. The Constitutional Court stated that, under the Constitution, only the Constitutional Court is empowered to interpret the Constitution officially. The Constitutional Court does so by deciding whether the laws are not in conflict with the Constitution, whether other acts of the *Seimas* are not in conflict with the laws and the Constitution, whether acts of the President of the Republic and the Government are not in conflict with the laws and the Constitution.

The Constitutional Court held that all constituent parts of the Constitutional Court ruling are interrelated, the Constitutional Court ruling constitutes a whole. Under Paragraph 2 of Article 56 of the Law on the Constitutional Court, a ruling of the Constitutional Court must state arguments upon which the ruling of the Constitutional Court is based. The principle of a state under the rule of law consolidated in the Constitution, *inter alia* implies the continuity of the jurisprudence. It means that the Constitutional Court, while deciding analogous constitutional disputes, observes the doctrine which was developed in earlier cases and which discloses the content of the Constitution. While considering the compliance of laws and other legal acts (or parts thereof) with the Constitution, the Constitutional Court develops its concept of constitutional provisions which was presented in its earlier rulings and other acts, while disclosing new aspects of the regulation established by the Constitution, which are necessary for the consideration of a particular case.

The Constitutional Court stated in the above mentioned ruling that taking account of the fact that all constituent parts of the Constitutional Court ruling are interrelated and constitute a whole, that a ruling of the Constitutional Court must state arguments upon which the ruling of the Constitutional Court is based and present the concept of the provisions of the Constitution, institutions that adopt the acts – the Seimas, the President of the Republic, and the Government – while adopting new, amending and supplementing already adopted laws and other legal acts, are bound by the concept of the provisions of the Constitution and other legal arguments presented in the part of reasoning of the Constitutional Court ruling.

Bearing in mind the legal power of the jurisprudence of the Constitutional Court individual complaint could come to the Lithuanian legal system as a result of the interpretation of the Constitutional provisions. Article 6 of the Constitution states that the Constitution shall be an integral and directly applicable act; everyone may defend his rights on the grounds of the Constitution. Article 30 of the Constitution declares that the person whose constitutional rights or freedoms are violated shall have the right to apply to court; the law shall establish the compensation for material and moral damage inflicted on a person. These provisions of the Constitution could be interpreted in the way that a person has a right to apply not only to ordinary courts, but also probably to the Constitutional Court, but the way of introducing the individual complaint model through the interpretation of the Constitution is much more difficult and unpredictable.

To bring in the constitutional complaint institute through the power of Constitutional Court to interpret officially the Constitution is a complicated way, as it has to be linked with the concrete application based on legal arguments why the provisions of the challenged laws that do not provide such right are in conflict with the provisions of the Constitution. In such case questions of the interrelation of respective articles of the Constitution with other articles of the Constitution, especially those which are establish the competence of the Constitutional Court, could be taken into consideration.

5. The influence of decisions of the Constitutional Court of the Republic of Lithuania on decisions of the ordinary courts and the protection of fundamental rights of individuals. Some recent decisions of the Constitutional Court that could be viewed as having important influence on the protection of rights of individuals and extending the limits of requests of ordinary courts.

It was pointed out that there is no right of individual petition in Lithuania, nor are there any possibilities for a person to challenge a decision of an ordinary court in the Constitutional Court directly. However, important constitutional issues were decided and the constitutional doctrine was developed, fundamental rights were protected while deciding the cases that are coming from the courts. Rather frequently courts of general jurisdiction and administrative courts address the Constitutional Court asking whether certain legal acts do not violate the human rights embedded particularly in Chapter II of the Constitution that codifies the fundamental rights. Over 80 percent of all petitions that are received by the Constitutional Court are from courts.

Under the Constitution (Article 110), a judge may not apply a law which is in conflict with the Constitution. In cases when there are grounds to believe that the law or other legal act applicable in a concrete case is in conflict with the Constitution, the judge shall suspend the consideration of the case and shall apply to the Constitutional Court requesting it to decide whether the law or other legal act in question is in compliance with the Constitution. In many cases where parties to the case under consideration bring up arguments that certain legal act could be in conflict with the Constitution (or in some cases secondary legislation being in conflict with laws) the respective court applies to the Constitutional Court and indicates the arguments.

The Constitutional Court can't review decisions of courts but some decisions of the Constitutional Court in some cases influence to a great extent decisions of the ordinary courts and comes close in dealing with the rights of many people who are affected by the laws that are reviewed by the Constitutional Court. Although the Constitutional Court of the Republic of Lithuania does not decide whether the rights of concrete people are implemented in a proper manner (it executes abstract control), however, decisions of the Constitutional Court in some

cases may substantially influence subjective rights of particular people. This happens especially when a court of general or special jurisdiction (an administrative court) is faced with a case, where a person disputes the validity of certain legal acts, which are claimed to be in breach of the rights entrenched in the Constitution. At present in Lithuania administrative courts quite frequently address the Constitutional Court with the request to investigate whether particular legal acts are not in conflict with the Constitution. It should be noted that unlike courts of general jurisdiction that hear criminal cases and consider disputes arising from civil, labour, family and other legal relations of private nature, administrative courts consider disputes that arise in the sphere of public administration. If the Constitutional Court recognizes that such legal act is in conflict with the Constitution, then a corresponding person may implement his subjective rights in a proper manner.

The Constitutional Court has interpreted almost all fundamental rights established in the Constitution. Most often the Constitutional Court decided whether legal acts comply with Article 23 of the Constitution (the right of ownership), Article 29 of the Constitution (prohibition of discrimination), the right to fair trial which is entrenched in Article 31 of the Constitution.

5.1. Ruling of 25 November 2002¹

The 25 of November 2002 ruling of the Constitutional Court of the Republic of Lithuania was of great importance for the protection of fundamental rights of many people, as in this case the Constitutional Court recognized the right to pension as the right to the property. In this case the Constitutional Court expanded the limits of its investigation and ruled that the provisions of the challenged laws were in conflict with an Article (Article 23) of the Constitution that was not challenged by the applicant.

In the said case the Higher Administrative Court requested the Constitutional Court to determine whether certain provision of the Law on the Diplomatic Service, of the Law on State Social Insurance and of the Law on State Social Insurance Pensions were not contrary to the Constitution. These laws allowed terminating payment of certain part of the pension, even after the pension had already been assigned, if a person used to receive more than a certain amount of revenue established by the law. Article 52 of the Constitution provides: "The State shall guarantee the right of citizens to receive old age and disability pensions, as well as social assistance in the event of unemployment, sickness, widowhood, loss of breadwinner, and other cases provided for in laws." Social assistance is entrenched in the Constitution in various ways. The pensions and social assistance indicated in Article 52 are one form of social security. The state, as the organization of the whole society, has an obligation to take care of its members in the event of old age, disability, unemployment, sickness, widowhood, loss of breadwinner and other cases provided for by the Constitution and laws. The Constitutional Court held that a person, who qualifies under the law for receiving of old age pension, has a right to receive payment of certain amount of money. This right is indeed the right to property that is enshrined in Article 23 of the Constitution. The Constitutional Court noted that after the pension was assigned, it is not allowed to reduce the amount of this pension or cancel its payment. Otherwise

¹ Ruling on the compliance of Paragraph 2 of Article 69 of the Republic of Lithuania Law on the Diplomatic Service, Item 9 of Paragraph 1 of Article 4 (wording of 16 March 2000) of the Republic of Lithuania Law on State Social Insurance and Item 5 of Paragraph 1 of Article 2 (wording of 16 December 1999) and Article 23 (wordings of 21 December 1994, 21 December 2000 and 8 May 2001) of the Republic of Lithuania Law on State Social Insurance Pensions with the Constitution of the Republic of Lithuania (Case No. 41/2000).

the right to property, the legitimate expectations, legal certainty and legal security would not be ensured.

Although during the examination of this case the Constitutional Court did not attempt to ensure the right to pension of a certain particular citizen, whose case was under the consideration in the Higher Administrative Court, however this decision of the Constitutional Court defended the right of this person to property. After this ruling all individuals who had been assigned a pension received the full amount of pension irrespective of their revenue that they might receive from other sources.

5.2. Ruling of 13 December 2004²

Another Constitution Court ruling of 13 of December 2004 could be mentioned that is also of not less importance for the individuals than the Court's decision on pensions. This decision is generally known as the decision on the state service. In this ruling the doctrine of the state under the rule of law to a great extent was further developed, and this doctrine has a great influence on decisions of ordinary courts and legislation. It relates to important rights of citizens.

In this case the Constitutional Court received even six requests from various Lithuanian courts asking to determine whether certain provisions of legal acts that regulate relations of state service are not in conflict with the Constitution. The Constitutional Court *inter alia* investigated whether certain provisions that allowed the state, if it lacked funds, to pay a smaller salary to state officials than they had to receive. The Constitutional Court emphasized that according to the Constitution, a legal situation, where a state servant, who fulfilled the assigned task, is not paid, is paid not in due time or is paid less than it is due according to the laws and other legal acts passed on the basis of the former, is impermissible. Taking into consideration the link between the right of each citizen to receive just pay for work and the right to ownership, one is to hold that such legal situation would mean that legal preconditions are created to violate by legal acts the constitutional right to ownership too, thus not only Paragraph 1 of Article 48 of the Constitution, but Article 23 of the Constitution as well. The principle of protection of legitimate expectations does not mean that the remuneration for work paid to the state servants from the funds of the State Budget or municipal budget, may not be reduced at all, however, this may be done only in exceptional cases and only if it necessary in order to protect the values consolidated in the Constitution. Still, even in such exceptional cases the remuneration for work may not be reduced in violation of the balance entrenched in the Constitution between the interests of a person and those of the society. It also needs to be noted that the remuneration for work may not be reduced only to separate categories of employees who are remunerated for their work from the funds of the state budget or municipal budget. The reduction of remuneration for work must be in line with the constitutional principle of proportionality.

The Constitutional Court also noticed that the legislator, when adopting, on 23 April 2002, the Law on Amending of the Law on the State Service for the implementation of which additional funds were necessary, had to make respective amendments to the State Budget and provide for the funds that were necessary so that this law would have been implemented. The Constitutional Court held that every individual, who performed certain work, must receive just payment for it. This right is treated as the right to property.

² Ruling on the compliance of some legal acts whereby the relations of state service and those linked thereto are regulated with the Constitution of the Republic of Lithuania and laws (Case No. 51/01-26/02-19/03-22/03-26/03-27/03).

Although in the case under consideration the Constitutional Court similarly as in the previously reviewed case did not examine whether a certain legal act violated the right to receive just payment of particular people, however, the decision of the Constitutional Court helped people to implement their right to receive just payment for work, since the decision of the Constitutional Court determined abolishment of certain provisions of the legal acts related to state service that prevented people from implementing their constitutional right. It should be mentioned that this case was especially welcomed by police officers, as their position had especially been worsened by these unconstitutional provisions. At present there exists some tension between some representatives of police officers' union and the Government of the Republic of Lithuania, since the police officers still want to get their money, which they have not received by the unconstitutional act. However, the Government of the Republic of Lithuania and courts of Lithuania refer to the legal provision that decisions of the Constitutional Court of the Republic of Lithuania have no retroactive effect and refuse to grant the money that the police officers have not received because of the unconstitutional provisions.

5.3. Ruling of 23 August 2005³

The decision reached by the Constitutional Court of the Republic of Lithuania on 23 of August 2005 was somewhat unusual and had specific effect on property rights of a number of people. In this ruling the court also expanded the limits of investigation and analyzed the compliance of challenged legal provisions with the constitutional principles of separation of powers and state under the rule of law and some other articles of the Constitution, that were not indicated in the application coming from the court. The exceptional matter of this ruling could be indicated as its official publication by the Constitutional Court was postponed, which is a rare case.

The petitioner, the Supreme Administrative Court of Lithuania applied to the Constitutional Court with a petition, requesting to investigate as to whether certain provisions of the Republic of Lithuania Law on the Amount, Sources, Terms and Procedure of Payment of Compensation for the Real Property Bought Out by the State, and on the Guarantees and Preferences Which are Provided For in the Law on the Restoration of Citizens' Rights of Ownership to the Existing Real Property were not in conflict with the Constitution. It was noticed by the Supreme Administrative Court that by the law that was adopted by the *Seimas* on 23 December 1999, upon amendment of the norms whereby the Government can independently establish the terms and procedure of payment of monetary compensation, also, upon postponement of the terms of payment of monetary compensation, the guarantees established to the owners in Article 7 of the Law to retrieve their property under most favourable terms and procedure were deteriorated. However, under Paragraph 3 of Article 23 of the Constitution, property may only be seized for the needs of society in accordance with the procedure established by law and shall be justly compensated for. Just compensation includes not only compensation of equal value for such property, but also the time period during which it is compensated.

³ Ruling on the compliance of Paragraph 1 (wording of 23 December 1999) and Paragraph 2 (wording of 23 December 1999) of Article 7 of the Republic of Lithuania Law on the Amount, Sources, Terms and Procedure of Payment of Compensation for the Real Property bought out by the State, and on the Guarantees and Preferences which are provided for in the Law on the Restoration of Citizens' Rights of Ownership to the existing Real Property and on the compliance of Paragraph 1 (wording of 14 October 2003) and Paragraph 2 (wording of 14 October 2003) of Article 7 of the Republic of Lithuania Law on the Amount, Sources, Terms and Procedure of Payment of Compensation for the Real Property bought out by the State, and on the Guarantees and Preferences which are provided for in the Law on the Restoration of Citizens' Rights of Ownership to the existing Real Property with the Constitution of the Republic of Lithuania (Case No. 19/02).

The Constitutional Court held that the fact that the state resolved that the denied rights of ownership have to be restored, also the fact that a law regulating restitution relations was adopted and that implementation of restoration of ownership rights was begun mean that the state took an obligation to restore the rights of ownership by the ways and under conditions and procedure established in the law also within the terms provided for in the law. Alongside, a duty occurred to the state (its institutions) to allot the necessary funds and other financial and material resources (*inter alia* in order to pay the monetary compensation for the real property bought out by the state). It needs to be noted that the legislator, when he legislatively establishes the ways, conditions and procedure of restoration of the rights of ownership to the existing real property, also when he consolidates such a way of restoration of the rights of ownership to the existing real property as compensation payment, is bound by the norms and principles of the Constitution: *inter alia* by Paragraph 2 of Article 128 of the Constitution under which the procedure concerning the possession, use, and disposal of state-owned property shall be established by law, by Article 23 of the Constitution which establishes the protection of the rights of ownership, by Article 29 of the Constitution, which guarantees equal rights of persons, and by the constitutional principle of a state under the rule of law, which encompasses legal clarity, legal certainty, legal security, protection of legitimate expectations and other requirements; the legislator is also bound by other norms and principles of the Constitution. While regulating the restoration of the rights of ownership to the existing real property, the legislator must take account of the constitutional principles of protection of property, as well as of the fact that in the course of restoring the rights of ownership to the existing real property it is necessary to protect also the other values entrenched in the Constitution, *inter alia* the striving for an open, just and harmonious civil society and to ensure that while restoring the ownership rights of certain persons, the owners, one does not violate the rights and legitimate interests of other persons as well as those of the entire society. In the process of restoration of the rights of ownership to the existing real property one must seek to attain a balance between the rights of the persons to whom the rights of ownership are being restored and those of the entire society.

The Constitutional Court held that the Law and the provision “the monetary compensation shall be paid <...> under procedure and conditions established by the Government” of the Law to the extent that it does not establish the criteria under which the Government could establish the terms (periodicity) of the payment of the portions of the allocated monetary compensation were in conflict with the Constitution and the constitutional principles of separation of powers and of a state under the rule of law.

It should be noted that in this case, the Constitutional Court decided to postpone the date of official publication of this decision, since according to the Constitutional Court if this Ruling of the Constitutional Court was officially published after its public promulgation at the hearing of the Constitutional Court certain provisions of the Law on the Amount, Sources, Terms and Procedure of Payment of Compensation for the Real Property Bought Out by the State, and on the Guarantees and Preferences Which are Provided For in the Law on the Restoration of Citizens’ Rights of Ownership, which have been recognized as being in conflict with the Constitution by this Ruling of the Constitutional Court, could not be applied from the day of official publishing of this Ruling of the Constitutional Court. In such a case there would have appeared such indeterminacies and gaps in the legal regulation of restoration of the rights of ownership to the existing real property due to which the restoration of the rights of ownership to the existing real property would have been disturbed in essence or even it would have been discontinued temporarily. Taking into account the fact that a certain time period is needed in order to make the changes and/or amendments to the laws and that the fulfilment of the state financial obligations to the persons to whom the rights of

ownership to the existing real property are restored is related to the formation of the State Budget and corresponding redistribution of state financial resources, this Ruling of the Constitutional Court will be published officially in the official gazette *Valstybes Zinios* on 30 of December 2005 (although this ruling was passed on 23 August 2005).