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REPORT

"THE PERSPECTIVES OF INDIVIDUAL CONSTITUTIONAL COMPLAINT IN LITHUANIA"

by

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1. General features of constitutional complaint

The modern institute of individual constitutional complaint became established in the 20th c., after a specialised form of constitutional control—constitutional courts—came into being; actually, it happened right after the end of World War II, since the activity of the constitutional courts established during the inter-war period was not successful: due to the emergence and entrenchment of dictatorial regimes in Europe, these institutions of constitutional control were not able to gain strength and soon stopped functioning. On the other hand, as long as constitutional control was exercised by courts of general jurisdiction, perhaps there was no actual need to create an institution of constitutional complaint, since every judicial case used to be an individual one, therefore, the arising issues of constitutionality of legal acts were always connected with a concrete person (concrete persons), and hence the definition of this constitutional control—it was concrete constitutional control. After constitutional courts were created, they began to exercise first of all abstract constitutional control, i.e. they investigated into the compliance of laws and other legal acts with the constitution in general, after they received petitions from the institutions having the right to apply to the Constitutional Court. Already this fact alone reflected the different nature and purpose of constitutional courts from courts of general jurisdiction. However, with the rise of the specialised form of constitutional control, which exercises abstract control, the problem of protection and defence of constitutional rights and freedoms of persons was not solved. Namely these needs determined the emergence of a special legal institute—the institute of individual constitutional complaint.

In most general sense, *the constitutional complaint* is an application by one or several persons to the institution of constitutional justice concerning the constitutionality of legal acts (most often, normative acts) applicable to this person (persons), or concerning the actions (or failure to act) of state institutions or their officials, which, in the opinion of the petitioners, unreasonably limited or violated their constitutional rights and freedoms.

It is a special measure of judicial defence, which is designed to protect and defend human rights and freedoms. By granting such powers to constitutional courts it was attempted to increase the level of protection of constitutional human rights and freedoms.

The aim of constitutional complaint if to ensure the exceptional opportunity for persons to directly apply to the institution of constitutional justice (a court of special jurisdiction), to initiate cases concerning verification of legal acts as well as actions (or failure to act) of officials in order to protect constitutional rights and freedoms of these persons.

In almost all European states in which constitutional courts were established (except Italy) the institute of constitutional complaint exists as well (e.g. in Austria, Belgium, Croatia, Czech Republic, Germany, Hungary, Latvia, Poland, Slovakia, Slovenia, Spain). This institute was introduced in a number of states in Asia, Africa and both Americas, in which there are constitutional courts.

It is noteworthy that although the institute of constitutional complaint has many similar features in various states, however, social-political differences and peculiarities of every country precondition also the characteristics of constitutional complaint of individual states. Thus, it is possible to state that no unified model of institute of constitutional complaint exists.

It is possible to consider that the following are the common elements of institute of constitutional complaint: the right of the person (or a group of persons) to apply to court with a complaint; the object of the complaint is a violated constitutional right or freedom; the presence of a specialised court that considers such complaints; establishment of special conditions for lodging such complaints; special rules for selection and acceptance of such complaints; special procedures for consideration of such complaints in court. It is possible to speak about the

common character of these elements only in general terms, since the concrete content of each element, especially their details may be different if various states.

When speaking about the differences (peculiarities) of the institute of constitutional complaint, one is to mention the following ones: the subjects of complaint are most often natural and legal persons, however, in some countries also the ombudsmen have the right of complaint (in Slovenia, Spain), or public prosecutors (in Portugal, Spain); where it is permitted to lodge complaints against legal acts, certain types of acts may be indicated, for instance, in Austria—decisions of administrative institutions, in Belgium and Hungary—normative legal acts, in Slovakia—only individual legal acts, etc.; in some states one may lodge a complaint against only certain legal acts, in other states—not only against legal acts, but also actions (failure to act) of officials by which constitutional rights and freedoms of persons were violated, etc.

In the states where the institute of constitutional complaint is provided for, one resorts to certain legal measures in order to protect the constitutional courts from a possible avalanche of complaints. For instance, most often one is permitted to file a constitutional complaint only after all other legal measures of defence have been exhausted, i.e. when with regard of the petitioner there is an adopted final decision whereby allegedly his constitutional rights have been violated. In addition, this compliant must be filed within a certain term (as a rule, from 20 days to 3 months from the adoption of a certain act or the entry into effect of a court decision, or within one year from the entry into effect of a certain law). There are also other, additional conditions for lodging the complaint: the complaint must be drawn up by an advocate or a person having education in law; when the complaint is lodged, a stamp duty of an established size must be paid, etc.

Taking account of the said and other peculiarities of the institute of constitutional complaint, the complaints are grouped in a varied manner.

If, under the Constitution and other legal acts, the petitioners are allowed to defend not only their rights, but also violated rights of other persons as well as the public interest (e.g., in Hungary), such complaint submitted to the constitutional justice institution is called *actio popularis* (the complaint of public action, or complaint regarding defence of the public interest). In addition, in Mexico, Peru, Spain and in some other countries of Latin America, there is an institute, which is close to the constitutional complaint, and which is called *amparo*, under which decisions of the constitutional justice institution are of individual character and are mandatory only to the parties of the case. Such application is designed for defending the fundamental rights and freedoms against any decisions of public power, however, it is not permitted to challenge the constitutionality of laws upon which the said decisions were adopted.

In European states, applications regarding violation of constitutional rights are further divided according to the subjects who are granted the right to apply to the constitutional justice institution, and according to the disputed legal acts (normative and/or individual), as well as according to the extent of rights that are protected and defended by constitutional complaint:

1) the complaint of *actio popularis* (public action) gives an opportunity to any persons (without requiring to prove the personal or individual interest and exhaust all other measures of legal defence) to apply to the constitutional justice institution regarding the compliance of legal acts and legal procedure with legal acts of higher power, by seeking to defend the public interest and constitutional order (Hungary, also, Bavaria—one of Lands of Germany);

2) the constitutional complaint of *wide scope* (or classical complaint) is designed to protect all rights and freedoms of the person without exceptions, which are entrenched in the Constitution (Germany), as well as in international treaties (Switzerland); this complaint may challenge legal acts passed by all state institutions, as well as their failure to act;

3) the constitutional complaint of *narrow scope* encompasses not all rights that are enumerated in the Constitution (Belgium, Spain), or not all legal acts adopted by state institutions, but only decisions of individual character (Czech Republic, Slovakia, Slovenia); or, the complaint may be lodged only regarding the normative acts on the grounds of which a decision of individual character is adopted (Latvia, Poland, Russia).

The legal consequences of constitutional court decisions, when the constitutional complaint is recognised as reasonable one, are also different. If the constitutional court abolishes a certain individual act of application of law, its consequences are important only with regard to the petitioner, however, if a law or other legal acts are abolished subsequent to a constitutional complaint, the consequences of such a decision are applied to everyone to whom this law or other legal acts was (or could be) applied.

2. Protection of constitutional rights and freedoms of the person in Lithuania

Under the Constitution of Lithuania, every person whose constitutional rights or freedoms are violated shall have the right to apply to court (Paragraph 1 of Article 30). By these provisions the right of a person to judicial protection of his violated rights and freedoms is established. The Constitution guarantees the right of the person to an independent and impartial arbiter which, under the Constitution and laws, might settle in essence the legal dispute that has arisen. It needs to be noted that every person has such a right. A person is guaranteed protection of his violated right in court regardless of the legal status of this person. The violated rights and legitimate interests of persons must be protected in court irrespective of the fact whether they are directly established in the Constitution or not. It needs to be emphasised that the rights of a person must be protected not in a formal manner but in actual and effective manner from unlawful actions of private persons as well as those of state institutions (Constitutional Court ruling of 8 May 2000[1]).

One of the main guarantees of protection of any person's rights is his right to appeal to court. The implementation of this right is conditioned by realisation of the person himself that his rights or freedoms are violated. No one may hinder his application to court. Application to court is a subjective procedural personal right guaranteed by the Constitution. Such right means that in a state under the rule of law every person is assured an opportunity to defend his rights in court from unlawful actions of private persons as well as those of state institutions or officials. It is especially important to guarantee that when there is a conflict regarding the innate rights or freedoms (Constitutional Court ruling of 1 October 1997[2]).

The right of the person whose rights or freedoms are violated to apply to court is absolute (Constitutional Court rulings of 30 June 2000, 17 August 2004, 29 December 2004, 7 February 2005, 16 January 2006[3]). It means that an imperative stems from the constitutional

[1] The 8 May 2000 Constitutional Court Ruling "On the compliance of Part 12 of Article 2, Item 3 of Part 2 of Article 7, Part 1 of Article 11 of the Republic of Lithuania Law on Operational Activities and Parts 1 and 2 of Article 198[1] of the Republic of Lithuania Code of Criminal Procedure with the Constitution of the Republic of Lithuania", Official Gazette *Valstybės žinios,* 2000, No. 39-1105.

[2] The 1 October 1997 Constitutional Court Ruling "On the compliance of Part 5 of Article 195 and Article 242 of the Code of Criminal Proceedings with the Constitution of the Republic of Lithuania", Official Gazette *Valstybės žinios,* 1997, No. 67-1696.

[3] The 16 January 2006 Constitutional Court Ruling "On the compliance of Paragraph 4 (wording of 11 September 2001) of Article 131 of the Code of Criminal Procedure of the Republic of Lithuania with the Constitution of the Republic of Lithuania, on the compliance of Paragraph 5 (wordings of 10 April 2003 and 16 September 2003) of Article 234, Paragraph 2 (wordings of 10 April 2003 and 16 September 2003) of Article 244, Article 407 (wording of 19 June 2003), Paragraph 1 (wording of 14 March 2002) of Article 408, Paragraphs 2 and 3 (wording of 14 March 2002) of Article 412, Paragraph

principle of a state under the rule of law and Paragraph 1 of Article 30 of the Constitution as well as other provisions of the Constitution that a person, who thinks that his rights or freedoms are violated, has an absolute right to an independent and impartial court—an arbiter who could solve the dispute; that the constitutional right of a person to apply to court—also to apply to court regarding both the rights directly consolidated in the Constitution and acquired rights—cannot be artificially restricted, nor that the implementation of this right may be unreasonably burdened (Constitutional Court ruling of 21 January 2008[4]).

Unprotected human rights and freedoms would become meaningless if the constitutional right of a person to apply to court was not assured; also, the generally recognised legal principle *ubi ius, ibi remedium*—if there is a certain right (freedom), there must be a measure for its protection—would be disregarded. In the legal system of the state, such measures are established by laws of that state. The Constitutional Court has also held that such legal situation, where a certain right or freedom of the person cannot be defended, also by means of the judicial procedure, although the person himself thinks that this right or freedom has been violated, is, under the Constitution, impossible, nor does the Constitution tolerate this. The general legal principle *ubi ius, ibi remedium,* the provision of Paragraph 1 of Article 6 of the Constitution that the Constitution shall be a directly applicable act, the constitutional principle of responsible governance, the provision of Paragraph 3 of Article 5 of the Constitution that state institutions shall serve the people, the provision of Article 18 of the Constitution that human rights and freedoms shall be innate, as well as the right of the person who thinks that his rights or freedoms have been violated to apply to court, which is consolidated in the Constitution, imply not only the fact that in such cases the rights, freedoms, legitimate interests and legitimate expectations must and may be defended by means of interpretation of the Constitution and direct application of its provisions, but also that such protection must be guaranteed by courts (Constitutional Court decision of 8 August 2006[5]).

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5 (wording of 14 March 2002) of Article 413 and Paragraph 2 (wording of 14 March 2002) of Article 414 of the Code of Criminal Procedure of the Republic of Lithuania with the Constitution of the Republic of Lithuania and on the petitions of the Šiauliai District Local Court, the petitioner, requesting to investigate whether Article 410 (wording of 14 March 2002) of the Code of Criminal Procedure of the Republic of Lithuania is not in conflict with the Constitution of the Republic of Lithuania", Official Gazette *Valstybės žinios,* 2006, No. 7-254.

[4] The 21 January 2008 Constitutional Court Ruling "On the compliance of Paragraph 8 (wording of 9 March 2004) of Article 18, Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 and Article 41 (wording of 9 March 2004) of the Republic of Lithuania Law on Alcohol Control with the Constitution of the Republic of Lithuania, on the compliance of Items 28.5 and 51.5 (wording of 20 May 2004) and Item 51 (wording of 20 May 2004) of the Rules of Licensing the Wholesale and Retail Trade in Alcoholic Products approved by Government of the Republic of Lithuania Resolution No. 618 "On Approving the Rules of Licensing the Wholesale and Retail Trade in Alcoholic Products and the Rules of the Retail Trade in Alcoholic Beverages at the Enterprises of Trade and Public Catering" of 20 May 2004 with the Constitution of the Republic of Lithuania, Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Republic of Lithuania Law on Alcohol Control, on the compliance of Item 51 (wording of 17 October 2006) of these rules with the Constitution of the Republic of Lithuania and Paragraph 17 (wording of 25 April 2006) of Article 34 of the Republic of Lithuania Law on Alcohol Control, as well as on the compliance of Item 51 (wording of 2 May 2007) of these rules with the Constitution of the Republic of Lithuania, and Paragraph 17 (wordings of 25 April 2006 and 21 June 2007) of Article 34 of the Republic of Lithuania Law on Alcohol Control", Official Gazette *Valstybės žinios,* 2008, No. 10-349.

[5] The 8 August 2006 Constitutional Court Decision "On dismissing the legal proceedings in the case subsequent to the petition of the Third Vilnius City Local Court, the petitioner, requesting to investigate as to whether Paragraph 3 (wording of 24 January 2002) of Article 11 of the Republic of Lithuania Law on Courts is not in conflict with Paragraph 2 of Article 5, Paragraphs 2 and 3 of Article 109, Paragraph 1 of Article 114 of the Constitution of the Republic of Lithuania and the constitutional principle of a state under the rule of law, whether the Republic of Lithuania Law on Remuneration For

Paragraph 1 of Article 109 of the Constitution provides that, in the Republic of Lithuania, justice shall be administered only by courts. Under the Constitution, it is impermissible to establish any such legal regulation which would create preconditions to restrict, let alone deny the powers of the court to administer justice, or deny the right of the person who thinks that his rights or freedoms have been violated to defend his rights or freedoms in court.

Thus, in the Constitution and the constitutional jurisprudence very important standards and guidelines for the legislator and other subjects creating and implementing law are established:

the imperative stemming from the constitutional principle of a state a person, who thinks that his rights or freedoms are violated, has an absolute right to an independent and impartial court;

this right cannot be artificially restricted, nor the implementation of this right may be unreasonably burdened;

it is impermissible to deny this right;

a person is guaranteed protection of his violated right in court regardless of the legal status of this person;

under the Constitution, the legislator has a duty to establish such legal regulation whereby all disputes regarding violation of rights or freedoms of a person could be settled in court;

the violated rights, *inter alia* acquired rights, and legitimate interests of persons must be protected in court irrespective of the fact whether they are directly established in the Constitution or not;

the rights of a person must be protected not in a formal manner but in actual and effective manner from unlawful actions of private persons as well as those of state institutions and officials;

the legal regulation consolidating the procedure for implementation of the judicial defence of rights and freedoms of a person must meet the constitutional requirement of legal clarity;

the legislator must clearly establish in laws as to how and to which court a person can apply so that he could actually implement his right to apply to court regarding violation of his rights and freedoms;

Work of State Politicians, Judges and State Officials (wording of 29 August 2000 with subsequent amendments and supplements) is not in conflict with Article 5, Paragraph 1 of Article 30, Paragraphs 2 and 3 of Article 109 and Paragraph 1 of Article 114 of the Constitution of the Republic of Lithuania and the constitutional principle of a state under the rule of law, and whether Item 1 of Government of the Republic of Lithuania Resolution No. 1494 “On the Partial Amendment of Government of the Republic of Lithuania Resolution No. 689 ‘On Remuneration for Work of Chief Officials and Officers of Law and Order Institutions and of Law Enforcement and Control Institutions’ of 30 June 1997’” of 28 December 1999 is not in conflict with Article 1, Paragraph 1 of Article 5, Paragraphs 2 and 3 of Article 109 and Paragraph 1 of Article 114 of the Constitution of the Republic of Lithuania and the constitutional principle of a state under the rule of law”, Official Gazette *Valstybės žinios,* 2006, No. 88-3475.

the law must establish such legal regulation so that it could be possible to appeal against the final act adopted by a court of general jurisdiction or a specialised court established under Paragraph 2 of Article 111 of the Constitution at least in one court of higher instance (Constitutional Court rulings of 6 December 1995, 1 October 1997, 5 February 1999, 21 December 1999, 8 May 2000, 19 September 2000, 12 February 2001, 5 June 2001, 12 July 2001, 2 July 2002, 23 October 2002, 4 March 2003, 10 June 2003, 17 August 2004, 13 December 2004, 29 December 2004, 7 February 2005, 10 November 2005, 16 January 2006, 28 March 2006, 9 May 2006, 6 June 2006, 27 November 2006, 15 May 2007, and 24 January 2008[6]).

It is noteworthy that the said constitutional provisions concerning the right of persons to apply to court are valid only as regards courts of general jurisdiction and specialised courts, i.e. it does not include the right to apply to the Constitutional Court directly. Although the Constitutional Court is a constituent part of the institutions administering justice, it has a special constitutional status and a special purpose.

Chapter VIII of the Constitution of the Republic of Lithuania establishes the competence of the Constitutional Court, *inter alia* the subjects that have the right to apply to the Constitutional Court with petitions requesting to investigate into the compliance of legal act with the Constitution: the President of the Republic, the Government, the Seimas (Parliament), a group of Members of the Seimas (not less than 1/5 of all the Members of the Seimas), and courts. Neither natural, nor legal persons are mentioned among the said subjects. Thus, it is to be emphasised that the constitutional right of a person does not include the right to apply to the Constitutional Court. It is evident that the so-called institute of individual constitutional complaint is not provided for in the valid Constitution of the Republic of Lithuania, therefore, in order to consolidate this institute in the legal system of Lithuania, corresponding amendments to the Constitution are necessary, since, as it has been mentioned, the Constitution exhaustively defines the competence of the Constitutional Court and entrenches the circle of subjects who have the right to apply to the Constitutional Court.

On the other hand, even in the present legal situation the Constitutional Court of the Republic of Lithuania has rather broad possibilities to protect the constitutional rights and freedoms of the person and it often makes use of these opportunities. First of all this is achieved by verifying whether the laws and other legal acts, which are challenged by the petitioners, and which regulate the relations linked with the implementation of constitutional rights and freedoms of persons are not in conflict with the Constitution. Although, in this situation the so-called abstract constitutional control is exercised, doubtless to say, it exerts direct influence to the protection and implementation of the constitutional rights and freedoms of many persons. Besides, most of the applications to the Constitutional Court, which are initiated by courts of general jurisdiction or administrative courts, are related with the problematics of constitutional rights and freedoms. Under Article 110 of the Constitution, 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 which should be applied 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.

Thus, actually the persons when they implement their right to apply to court they become a party in a corresponding judicial case and may request that the court apply to the Constitutional Court, so that the later would investigate the compliance of the laws or other legal

[6] The 24 January 2008 Constitutional Court Ruling “On the compliance of Paragraph 2 (wording of 14 March 2002) of Article 425 of the Code of Criminal Procedure of the Republic of Lithuania with the Constitution of the Republic of Lithuania”, Official Gazette *Valstybės žinios,* 2008, No. 11-388.

acts, which must be applied in the concrete case, with the Constitution. As it was held in the Constitutional Court ruling of 24 October 2007, the right of each person to defend his rights on the basis of the Constitution and the right to apply to court of the person whose constitutional rights or freedoms are violated also imply that each party of the case considered by a court, which has doubted on the compliance of the law or other legal act (part thereof) that may be applied in that case and the investigation on the compliance of which with the Constitution (other legal act of greater power) is attributed to the jurisdiction of the Constitutional Court (i.e. the compliance of a certain act (part thereof) of the Seimas, the President of the Republic or the Government or an act (part thereof) adopted by referendum with the Constitution (other legal act of greater power)), has the right to apply to the court of general jurisdiction or a corresponding specialised court established under Paragraph 2 of Article 111 of the Constitution which considers the case and to request to suspend the consideration of the case and to apply to the Constitutional Court with a petition, requesting to investigate and decide whether the legal act (part thereof) passed by the Seimas, the President of the Republic or the Government or adopted by referendum and which is applicable in the said case, is not in conflict with a legal act of greater power, *inter alia* (and, first of all) with the Constitution. By the way, this is applicable *mutatis mutandis* also to those legal situations when a certain party of a case considered by a court has doubts on the compliance of the law or other legal act (part thereof) that may be applied in that case and the investigation on the compliance of which with the Constitution (other legal act of greater power) is not attributed to the jurisdiction of the Constitutional Court (i.e. that act has not been passed by the Seimas, by the President of the Republic or by the Government and it has not been adopted by referendum)—the said party, under the Constitution and laws (*inter alia* Law on the Proceedings of Administrative Cases), has the right to apply to the corresponding administrative court on the compliance of such legal act (part thereof) with the Constitution (other legal act of greater power).[7]

It goes without saying, the right of persons to request that a court of general jurisdiction or a specialised court apply to the Constitutional Court cannot be regarded as the direct right of the person to apply to the Constitutional Court, however, on the other hand, a statement that persons in general cannot make use of the constitutional control exercised by the Constitutional Court, would be hardly true. In this situation, perhaps, it would be more precise to speak about courts of general jurisdiction and administrative courts as sort of mediators between the person who seeks to initiate a constitutional dispute and the Constitutional Court; or, even perhaps about those courts as sort of filters upon passing which these complaints are considered in the Constitutional Court. It is noteworthy that this model has been functioning for many years not only in Lithuania. For instance, according to the President of the Constitutional Court of Italy, a very similar system of selection of constitutional disputes has served the purpose and completely satisfies the needs of Italian society.

It goes without saying, it is not the real model of the institute of constitutional complaint, since in this case the right of persons to apply to the constitutional control institution may be implemented only through another court, which performs the functions of the mediator; thus, it is not the direct right of the person to apply to the Constitutional Court.

3. The outlines of a possible model of the institute of constitutional complaint in Lithuania

Taking account of the practice of Constitutional Court of other states, especially those of the European Union, there appeared discussions in Lithuania regarding the expediency and possibilities of introduction of the institute of constitutional complaint several years ago. As a

[7] The 24 October 2007 Constitutional Court Ruling “On the compliance of Articles 4 and 165 (wording of 28 February 2002) of the Code of Civil Procedure of the Republic of Lithuania with the Constitution of the Republic of Lithuania”, Official Gazette *Valstybės žinios,* 2007, No. 111-4549.

consequence of this a political decision was adopted–the Seimas of the Republic of Lithuania, by its resolution No. X-1264 "On approving the Conception of Consolidation of the Institute of Individual Constitutional Complaint" of 4 July 2007[8], approved the *conception* of consolidation of the institute of individual constitutional complaint, in which *inter alia* it was noted that "at present in Lithuania persons are guaranteed the right to apply to the European Court of Human Rights and make use of international judicial means of protection of human rights, however, there is not an institute of individual constitutional complaint, which would allow to decide the legal issue on the national and constitutional level." It was noted in the conception that, under the Constitution, a person must be assured the right to defend his violated constitutional rights and freedoms not only in courts of general jurisdiction and specialised courts, but also in the Constitutional Court; this right is a special measure of protection against unlawful decisions of public power; thus, the emergence of the individual constitutional complaint is determined by the constitutional system of Lithuania; taking account of this, in the legal system of Lithuania it is necessary to consolidate the institute of individual constitutional complaint on the constitutional level and thus secure a special protection of this institute.

It needs to be mentioned that in order to implement the political decision on the introduction of the institute of individual constitutional complaint, an amendment to the Constitution must be made and it is necessary to supplement the law on the Constitutional Court. At the beginning of this year corresponding draft laws were prepared and the procedure of their consideration at the Seimas began.

Under the conception approved by the Seimas of the Republic of Lithuania, either a natural or a legal person whose constitutional rights or freedoms will be violated could be a subject of individual constitutional complaint; the basis for the application to the Constitutional Court could be a law or other act (or part thereof) of the Seimas, an act (or part thereof) of the President of the Republic or the Government, upon which a decision violating the rights or freedoms of the persons will be adopted. Thus, in Lithuania the model of the constitutional complaint of *narrow scope* was chosen. This model allows one to challenge in essence the constitutionality (lawfulness) of only the above-mentioned legal acts. In this case perhaps the violations of rights and freedoms of a person due to improper application of a law or other legal act, i.e. cases of abuse of law by officials, could remain outside the reach of constitutional control. Also, another issued needs to be discussed, i.e. whether the Constitutional Court could investigate, e.g. interpretation of a law or other disputed legal act, i.e. if the law or act in conflict with the Constitution, thus its interpretation is also faulty.

The conception approved by the Seimas also provides for measures for regulation (slowing down) for a possible surge of complaints: a person will be able to apply to the Constitutional Court only after he exhausts all other measures of legal defence; the term for application to the Constitutional Court should not be longer than 3 months from adoption of the final decision of a state institution; the complaint should be drawn up by an advocate (unless the natural person himself had higher education in law); the petitioner, while lodging a complaint, would have to pay a stamp duty of an established size.

The question on introduction of a stamp duty has also lead to a number of discussions and doubts, especially when one has in mind the persons who are socially vulnerable, therefore the Conception provides that the Constitutional Court, while taking account of the proprietary position of a natural person, must have the right to exempt from payment of the stamp duty (part thereof). Such a decision will have to be reasoned and substantiated by the evidence attached to the request of the person, which would confirm the reasonableness of the request.

[8] Official Gazette *Valstybės žinios,* 2007, No. 77-3061.

It is provided that the initial selection of complaints will be entrusted with a justice or a college of justices of the Constitutional Court, while the question of acceptance should be decided by the Constitutional Court (subsequent to the presentation or recommendations of the justice of the college of justices). It goes without saying that the issues of the initial selection of complaints and their acceptance, as well as the procedure for judicial consideration of the accepted complaints should be regulated exhaustively by the Law on the Constitutional Court. The possibility of formation of colleges of justices, legalisation of the use of the written process, as well as measures assuring the complaint, are to be attributed to issues of utmost importance.

The conception provides what legal consequences could be risen by a decision of the Constitutional Court whereby the constitutional complaint would be recognised as reasonable: in such a case the person who has lodged the complaint would acquire the right to apply to the state institution regarding the defence of the violated right, i.e. to the same institution which adopted the decision that violated the constitutional rights and freedoms of the person. Thus, the person would be granted an opportunity to challenge and defeat legal acts of individual character (including court decisions) and their legal consequences to the constitutional rights and freedoms of the person. It means that the exception provided for and, in this case, the legal power of rulings of the Constitutional Court may be retroactive, i.e. there is a possibility to challenge and defeat decisions of individual character, which were adopted on the grounds of a legal act which was in force at that time (i.e. before this act was recognised anti-constitutional). It is noteworthy that the Constitution of Poland contains a provision with more concrete content—a ruling of the Constitutional Tribunal on contravention of the legal act on the grounds of which an effective court decision, final administrative decision or other decision was adopted, with the Constitution, shall be grounds for renewal of the case proceedings or amending the decision under procedure established by laws.

Conclusions

The constitutional complaint is one of legal measures to protect violated rights and freedoms of the person. Although in most countries only one or two percent of all constitutional complaints meet the requirements of acceptability and become constitutional justice cases, this institute is not an additional measure of big importance for protection and defence of constitutional rights and freedoms.

The constitutional complaint is a special legal instrument, which grants additional rights of personal nature to dispute decisions of or failure to act by state institutions, and, alongside, makes an impact on the entire legal system, the activity of courts and other state institutions, the quality of decisions of all branches of state power. The fact is of special important that the institute of individual constitutional complaint may be an additional instrument of purification and cleaning of the legal system, by *de facto* eliminating the laws or other legal acts (parts thereof), which were recognised as contravening the Constitution. The institute of constitutional complaint is one of the factors helping to implement the idea of the “living” Constitution, to adapt its text to dynamic social relations, to secure a balance between the fundamental rights of the person and public interests of the entire state and society.

In order to assure that constitutional complaints be substantiated by legal arguments, that the extent of the Constitutional Court activity be optimised, that a rational balance between the Constitutional Court powers and competence and those of other courts be established, clear criteria for selection of constitutional complaints are necessary. Some of such criteria are of formal character (form of application, its annexes, terms, participation of an advocate, exhaustion of other measures of legal defence, etc.), while the other requirements are related with the content of constitutional complaints (substantiated by legal arguments, by the striving to secure the rights and freedoms of the person entrenched in the Constitution and inseparable from the individual interest to defend possibly violated constitutional values).