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**THE DEVELOPMENT OF CONSTITUTIONAL REVIEW
AND HUMAN RIGHTS PROTECTION BY THE
CONSTITUTIONAL COURT OF LITHUANIA**

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It is an honour for me to be here today and together with you to commemorate the 70th anniversary of the Constitution and the Constitutional Court of Taiwan. Seventy years are marked by great achievements in building and developing the democratic constitutional order in Taiwan, which is founded on the rule of law and the respect for human rights. Sometimes this has been done in particularly difficult conditions faced by Taiwan.

This has been possible to achieve also due to the activities of the Constitutional Court. Although we are separated by oceans and thousands of miles, we do not feel this distance looking at the jurisprudence of the Constitutional Court of Taiwan, which can serve for the constitutional courts around the world as one of the most striking examples of the strict following of the rule of law and human rights protection.

Let me recall that the relations between our constitutional courts were established more than 10 years ago. Last year the delegation of the Constitutional Court (Judicial Yuan) took part in the 4th Congress of the World Conference on Constitutional Justice in Vilnius. We are proud of having you as a partner of international judicial cooperation and dialogue.

Introduction

The topic of my report here is namely about what unites us despite of geographical distance and cultural differences – the mission of the Constitutional Court to ensure the supremacy of the Constitution and the rule of law, in particular the protection of human rights.

Let me begin by noting that ancient thinkers have stated that it is impossible to get into the same river twice. We live under constant changes, including emerging challenges to the rule of law (for example, grave breaches of international law and order, global economic crises, migration, terrorism, corruption), which may require new measures to respond them. Sometimes the responses can be questioned with regard to their compatibility to international and constitutional human rights standards as well as the rule of law in general.

Last year by adopting the Vilnius *Communiqué*¹ the 4th Congress of the World Conference on Constitutional Justice agreed that, despite the fact that the principle of the rule of law is interpreted in each state in a specific manner, it nonetheless constitutes the cornerstone of every legal system in the modern world, where it is integrally linked to democracy and the protection of human rights. The Vilnius *Communiqué* stated that the rule of law is a generally recognised principle, inseparable from the constitution itself; as a fundamental constitutional principle, it requires that the law be based on certain universal values, thus it is essentially inherent to every constitutional issue. The Vilnius *Communiqué expresses the adherence of the world constitutional courts to the* substantial concept of the rule of law, which includes the respect for human rights, in particular human dignity, rather than literal observance of the constitution and laws.

That is why it is also true that, as far as the rule of law is concerned, the direction of the river and its waters in essence remain untouched by the passage of time. Indeed, all the modern constitutions, including those of our countries, contain not only provisions on the state administration, division of powers and the functioning of state institutions². Their significant part is devoted to fundamental and other rights and the corresponding restrictions of the state power³. The purpose of the constitution to protect human rights and freedoms by imposing restrictions on the state power remains the same from the time when the first constitutions were adopted⁴.

This assumption leads us to the following important insights. First, the supremacy of the constitution and the rule of law cannot be contrasted to each other; on the contrary, by guaranteeing the supremacy of the constitution (this is the principal task usually assigned to the constitutional courts), the constitutional courts are also ensuring the rule of law, the constituent element of which is the effective protection of human dignity and fundamental rights. Second, in order to pursue their mission effectively, the constitutional courts must be granted and assume all the necessary powers, i.e. not to restrict themselves to the powers expressly provided in the text of the constitution, but also to find in the constitution the implied powers that can be derived from and indispensable for their mission (certainly, by identifying the implied powers, the constitutional courts cannot overstep the limits established by the expressly provided restrictions for their jurisdiction⁵). Otherwise the constitutional

¹ Vilnius *Communiqué* (doc. No. CDL-WCCJ-GA(2017)007, 13 September 2017), 4th Congress of the World Conference on Constitutional Justice “The Rule of Law and Constitutional Justice in the Modern World”: <<http://www.wccj2017.lt/data/public/uploads/2017/09/cdl-wccj-ga2017007-eed.pdf>>.

² According to the Constitution of Taiwan, national government is comprised of five branches: the Legislative Yuan, the Executive Yuan, the Judicial Yuan, the Examination Yuan and the Control Yuan. CALDWELL, E. Chinese Constitutionalism: Five-Power Constitution, 2017, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2828104&download=yes>.

³ BREWER-CARIAS, A. R. Études de droit public comparé. Bruxelles: Bruylant, 2001, p. 936. Cit. from Jarašiūnas, E., Žiobienė E., Žalėnienė, I., Vidrinskaitė, S., Gailiūtė, D. *Žmogaus teisių apsaugos institucijos*. Vilnius: Mykolo Romerio universitetas, 2009, p. 193. See: Chapters II, XII and XIII of the Constitution of the Republic of China (Taiwan) (<<http://www.taiwandocuments.org/constitution01.htm>>), Chapters II-IV of the Constitution of the Republic of Lithuania (<<http://www.lrkt.lt/en/about-the-court/legal-information/the-constitution/192>>).

⁴ According to E. Jarašiūnas, constitutionalism (the doctrine of the restriction of the state power for the sake of human rights) can be traced to the ideas and the first written constitutions of XVIII century. JARAŠIŪNAS, E. Konstitucionalizmo priešistorė: ištakos ar pirmavaizdis. *Jurisprudencija*, 2009, No. 4 (118), p. 43.

⁵ For example, in contrast with the competence of the Constitutional Court of Taiwan, the Constitutional Court of Lithuania can directly examine only the acts of the Seimas (Parliament), the President of the Republic and the Government (Arts. 102 and 105 of the Constitution of the Republic of Lithuania), i.e. the acts of lower force

courts would be unable to respond effectively to the newly emerging challenges to the rule of law and we could have an increasing gap in the system of constitutional control and human rights protection.

Thus, in my report I will deal with the three issues that can reveal how the mission of the Constitutional Court is understood and pursued in Lithuania: 1) the evolution of powers of the Constitutional Court in pursuing constitutional review within the framework of the Constitution, 2) the perception of the Constitution as the jurisprudential Constitution and 3) the main features of the human rights doctrine. As their roots are based on the general understanding of the rule of law, I hope that the short overview of these issues is worth attention of wider legal community.

1. The Evolution of the Powers of the Constitutional Court

The powers of the constitutional courts established in the texts of national constitutions may vary from country to country. The common power, which is primary and main competence of constitutional courts justifying their existence, is the control over the constitutionality of legal acts. In this way, constitutional courts carry out their duty to remove unconstitutional provisions from the respective legal systems. Both the Lithuanian and the Taiwanese constitutions provides for this power of the respective constitutional courts, although in a different manner and scope. Meanwhile other powers granted to the constitutional courts can be different: delivering an official interpretation of constitutional provisions, various kind of involvement in the impeachment procedures, settling disputes between state institutions, determining the legality of elections, ruling on the constitutionality of political parties, etc.

However, it is hardly possible to enumerate all the powers (or all aspects thereof) of the constitutional court in the constitution, which may be necessary for the performance of its mission to ensure the supremacy of the constitution and the rule of law. The provisions of the Constitution of the Republic of Lithuania that establish the powers of the Constitutional Court are also formulated rather laconically⁶. Thus, like other provisions of the Constitution, they require interpretation by the the Constitutional Court, as a sole official interpreter of the Constitution. Namely here there is a room for the implied powers that can be derived from the constitutional mission of the Constitutional Court interpreted together with the expressly provided powers. These implied powers are found in the Constitution in response to the non-traditional or unusual attempts of unconstitutional legislation or sometimes even seeking to prevent unconstitutional actions. Without a doubt, here a lot depends on the determination of the Constitutional Court to cope with the newly emerging challenges and to implement its mission in the most efficient way.

Although sometimes this kind of the evolutive development of the powers of the

(orders of ministers and acts of municipalities) do not fall within the jurisdiction of the Lithuanian Constitutional Court. Their constitutionality can be verified by the Supreme Administrative Court and can be challenged before the Constitutional Court only indirectly by questioning the relevant provision of statutory law, which was a legal basis for the minister or the municipal council to adopt its act.

⁶ Deciding on the compliance of the laws and other acts of the Parliament, the acts of the President of the Republic and the acts of the Government with the Constitution, as well as submitting conclusions on certain issues, such as violations of the electoral laws, ability of the President of the Republic to conduct his duties due to the state of health, compatibility of a treaty of the Republic of Lithuania with the Constitution, compatibility of the actions of certain highest state officials with the Constitution (Arts. 102 and 105 of the Constitution).

Constitutional Court can be associated with the so-called judicial activism (the phenomenon that has no precise legal definition and more often referred in the political science), it should be rather described as the proper and effective fulfilment by the Constitutional Court of its duties. In disclosing its implied powers in its jurisprudence⁷, the Constitutional Court is led by two main principle clauses. First, no compromise can be made at the expense of the Constitution and the rule of law. Therefore, by its rulings, the Constitutional Court has to make the throughout examination of all the issues of unconstitutionality involved or concerned with the case before it, including the aspects that are not raised by petitioners⁸. When it deems necessary, the Constitutional Court can prevent certain action, by pronouncing in advance on unconstitutionality of a certain type of the legal regulation⁹.

Second, under the Constitution, the Constitutional Court is the institution of constitutional justice, which administers the constitutional justice, by ensuring the supremacy of the Constitution and constitutional legitimacy in the legal system¹⁰. This means that, as for any other court, the decisions of the Constitutional Court cannot be unjust. As stated by the Constitutional Court¹¹, the principle of justice means that the constitutional value is not the adoption of a decision in court, but rather the adoption of a just court decision. Therefore, the rulings of the Constitutional Court should address not only the abstract issue of constitutionality of the impugned legal act; when necessary, they should also be adjusted to the concrete circumstances of the case and constitutional dispute, in order to make the ruling effective rather than only declaratory.

Let me illustrate the evolution of the implied powers of the Constitutional Court by the following examples that can be regarded as the most important for the protection of human rights. First, from the jurisprudence of the Constitutional Court we can see the well established principle that no legal act may have immunity from constitutional review. This means that there should be no gaps in the system of constitutional review. Therefore, the Constitutional Court cannot restrict its jurisdiction only with regard to the the legal acts expressly mentioned in the list of acts provided by the text of the Constitution (laws and other acts of the Parliament, acts of the President of the Republic, acts of the Government of the Republic). The Constitutional Court should also assume the jurisdiction to review the constitutionality of all the acts with not lower rank than the acts of the Government, even if they are not named in the text of the Constitution.

If this expansion of the jurisdiction were precluded, then the preconditions would be created for “circumventing” the Constitution by adopting the legal acts whose constitutionality could not be verified by anyone; therefore, it would be impossible to effectively ensure the

⁷ The case law of the Constitutional Court of the Republic of Lithuania in English is available at its official website: <<http://www.lrkt.lt/en/court-acts/rulings-conclusions-decisions/171/y2018>>.

⁸ For instance, the Constitutional Court assumed the powers to examine the constitutionality of such legal acts whose compliance with the Constitution is not impugned by the petitioner, when it regulates the issues closely related to those covered by an impugned impugned legal act, as well as the powers to examine the compliance of legal acts with those norms of the Constitution that are not specified by the petitioner. These powers of the Constitutional Court are based on the implementation of constitutional justice, which implies the obligation to remove from the legal system all the unconstitutional acts concerned with the case. E.g., see the rulings of 29 November 2001, 14 January 2002 and 8 July 2016 of the Constitutional Court.

⁹ For instance, stating about the types of unconstitutional referendums in the official constitutional doctrine. See the 11 July 2014 ruling of the Constitutional Court.

¹⁰ E.g., see the rulings of 6 June 2006 and 19 June 2018 of the Constitutional Court.

¹¹ E.g., see the ruling of 21 September 2006 of the Constitutional Court.

supremacy of the Constitution and the rule of law, in particular to protect the hierarchy of constitutional values and legal acts.

The principle that no legal act may have immunity from constitutional review explains why the Constitutional Court can decide, for instance, on the constitutionality of constitutional amendments¹² (adopted either by the Parliament or by referendum), although there is no express constitutional provision on the judicial review of constitutional amendments. However, it is clear that in absence of the judicial review the procedural and material limitations established by the Constitution for constitutional amendments would become meaningless; in other words, there would be no means to preclude or to outlaw the adoption for the constitutional amendments of any content or under any procedure. Moreover, it would be against the logic to have in place the constitutional review of ordinary legislation and, at the same time, to refuse from examining the constitutionality of constitutional amendments that may have far more reaching and more serious consequences for the constitutional order. Therefore, it would be reasonable to state that the judicial constitutional review of constitutional amendments should be regarded as an immanent function of constitutional justice, i.e. of any constitutional court, whether or not this function is expressly provided in the text of the constitution.

The same logic applies to the acts adopted by referendum. The Constitutional Court stated about its powers to review constitutionality of laws or other acts passed by the referendum¹³, although this kind of legal acts are not mentioned in the text of the Constitution as an object of the constitutional review. Even the people (the nation) who adopted the Constitution are subject to the Constitution, including the procedural and material requirements for referendums. Therefore, under the Constitution, not any issue can be put to decide for the referendum; the acts adopted by the referendum should comply with the Constitution and the hierarchy of legal acts established therein.

Assuming the jurisdiction of the Constitutional Court of Lithuania over constitutional amendments and the acts passed by the referendum still plays rather theoretical and preventive role in the field of human rights protection: for instance, it is clear that no constitutional amendments or no referendums are allowed on the dismemberment of the democratic order or the denial of innate nature of human rights (e.g., the reintroduction of a death penalty). However, there is one rather practical case that is also related with the issue of the jurisdiction of the Constitutional Court: this is the case on the constitutionality of the State Family Policy Concept¹⁴. Before examining the content of this Concept, the Constitutional Court had to decide on the jurisdiction, whether the constitutionality of the Concept could be verified at all. This Concept was adopted by the Resolution of the Parliament and was neither binding nor directly applicable. Before this case there was a prevailing view that such not normative acts should not fall under the jurisdiction of the Constitutional Court. However, the Concept established guidelines for the state policy on family issues, including for the appropriate legislation in this field. Taking this into account, the Constitutional Court assumed the jurisdiction over the Concept, by the same token confirming that no act of the Parliament,

¹² In its ruling of 24 January 2014 the Constitutional Court recognised that the Law Amending Article 125 of the Constitution, in view of the procedure of its adoption, was in conflict with Para. 1 of Article 147 of the Constitution, i.e. the constitutional amendment passed by the Parliament was declared unconstitutional.

¹³ E.g., see the ruling of 28 March 2006 of the Constitutional Court.

¹⁴ See the ruling of 28 September 2014 of the Constitutional Court.

the adoption and content of which can be assessed from the legal point of view, can be immune from the constitutional review. In other words, even the resolutions of the Parliament cannot be passed under any procedure or be of any content. Accordingly, the Constitutional Court assessed the content of the State Family Policy Concept: the definition of family narrowing it only to the family founded on the basis of marriage was recognised as unconstitutional, as this definition was not in compliance with the constitutional concept of family and was discriminatory in respect of families founded on other basis (e.g., not married couples or single parents with children). This ruling of the Constitutional Court precluded the adoption of the further legislation that would implement the Concept and would introduce the discrimination between different types of families. Thus, the assumption of the jurisdiction in this case resulted in the early prevention of discrimination in family matters: had the Constitutional Court refused to examine the case, the discriminatory policy would become a reality.

Secondly, the evolution of the implied powers of the Constitutional Court can also take place on the basis of the prohibition to overrule a final act of the Constitutional Court. This principle arises from the binding nature of a final act of the Constitutional Court, as well as from the finality and non-appealability of a final act of the Constitutional Court, as expressly established by the text of the Constitution¹⁵. In this regard, any act overruling the legal power of a final act of the Constitutional Court should be considered null and void. Therefore, although para. 3 of Art. 107 of the Constitution states about the prospective force of the decisions of the Constitutional Court, the Constitution itself provides the implied exception from this rule: the explicitly stated in the Constitution finality and non-appealability of a final act of the Constitutional Court, the principles of the supremacy of the Constitution and the rule of law, as well as the constitutional mission of the Constitutional Court, give rise to the power of the Constitutional Court to declare unconstitutional all the legal consequences of a legal act adopted in breach of the prohibition on overruling the legal power of a final act of the Constitutional Court (these consequences include those that occurred before declaring this act unconstitutional)¹⁶. In other words, the ruling of the Constitutional Court, where the overruling of the previous act of the Court is established, may have the retroactive application. Otherwise, preconditions would be created for a situation, which is obviously not tolerated by the Constitution: it is a situation, where, in pursuit of short term political goals, a knowingly unconstitutional legal act could be deliberately adopted, which would overrule the legal power of a final act of the Constitutional Court and, for a limited period (until the legal regulation established by the said act is declared unconstitutional once again by the Constitutional Court), would create knowingly anti-constitutional, though formally legal, consequences.

The possibility for the Constitutional Court to declare null and void all the consequences of a legal act that overrules the legal power of a final act of the Constitutional Court discourages the deliberate adoption of knowingly anti-constitutional legislation. That is why there is only one case where the act of the Parliament was recognised in essence as null and void¹⁷: the Constitutional Court recognised as unconstitutional the resolution of the Parliament, which

¹⁵ Para. 2 of Art. 107 of the Constitution: “The decisions of the Constitutional Court on the issues assigned to its competence by the Constitution shall be final and not subject to appeal”.

¹⁶ See the decision of 19 December 2012 of the Constitutional Court.

¹⁷ See the ruling of 27 May 2014 of the Constitutional Court.

aimed at the changing the final results of parliamentary elections contrary to the conclusion of the Constitutional Court on the disqualification of certain candidates whose election had been sought by fraudulent means; the Constitutional Court also pronounced that this parliamentary resolution could not alter the final results of the elections to the Parliament, by the same token preventing any distortion of the will of voters.

Thirdly, the implied powers of the Constitutional Court to declare the impugned legislation null and void (i.e., to proclaim unconstitutional all the consequences of the disputed legal act) can also be applied in cases of the gravest breaches of the fundamental constitutional values¹⁸ or principles. For example, in one of the recent rulings (of 19 June 2018) the Constitutional Court declared that no legal consequences for the persons concerned (the institutions of higher education) could arise from the legislation that was recognised unconstitutional because it was not possible to implement (it required an extremely short period for the temporary accreditation of all the programmes of studies), i.e. due to its apparent incompatibility with the principle of the rule of law, including the principle of *lex non cogit ad impossibilia*. It would be contrary to the constitutional justice to recognise as constitutional even the limited consequences of the legislation that was not possible to follow by all the persons concerned.

2. Concept and the Principles of the Development of the Jurisprudential Constitution

The development of constitutional review in Lithuania can be associated not only with the evolution of the powers of the Constitutional Court. It is inseparable from the concept of the jurisprudential Constitution¹⁹, emerged approximately after the first decade of the functioning of the Constitutional Court, when the existence of such a Constitution could be confirmed by both qualitative and quantitative parameters of the jurisprudential part of the Constitution.

The jurisprudential Constitution is understood as the official interpretation of the text of the Constitution and its meaning in the jurisprudence of the Constitutional Court, i.e. it is referred in the jurisprudence of the Constitutional Court as the official constitutional doctrine. It is developed by the Constitutional Court by exercising its inherent function to interpret officially the Constitution in adjudication of the constitutional disputes.

The Constitution, perceived as the jurisprudential Constitution, is vital for three purposes. First, only this concept can ensure the real supremacy of the Constitution, which implies the uniform and binding understanding and implementation of the constitutional provisions. Secondly, it ensures the stability of the constitutional order, in particular the effective safeguarding of the constitutional foundations of the State and its people (the independence of the State, democracy, the respect for human rights, the Western geopolitical orientation). Thirdly, it ensures the progressive development of the State and society, as it is the “living” Constitution, which is capable to adapt the text of the Constitution to the changes in the development of society and international life, i.e. to avoid unnecessary changes and

¹⁸ Such as the independence of the State, democracy and innate nature of human rights defended by the fundamental Art. 1 of the Constitution and the Act of Independence of 16 February 1918. See the decision of 19 December 2012 of the Constitutional Court.

¹⁹ See: Žalimas D. The Constitution of the Republic of Lithuania as the Jurisprudential Constitution. // Lithuanian Constitutionalism: the Past and the Present. Vilnius: the Constitutional Court of the Republic of Lithuania, 2017, p. 289-387.

turbulences in the constitutional order.

From the jurisprudence of the Constitutional Court of Lithuania we can see that the development of the jurisprudential Constitution, or the official constitutional doctrine (the jurisprudence of the Constitutional Court), is based on the following main principles: 1) gradual development; 2) consistency; 3) the inadmissibility of interpretation of the Constitution based on lower-ranking legal acts; 4) the harmonisation with international and the European Union law; 5) the application of different methods of the interpretation of the Constitution.

Principle of gradual development. The constitutional doctrine on a certain issue is not formulated all “at once”, but “case by case”, by supplementing the elements disclosed in previous constitutional justice cases with new elements. New doctrine is formulated on the basis of the existing doctrine. This process is uninterrupted and is never fully finished, because the possibility of the necessity to disclose new aspects of the constitutional legal regulation, which have not been disclosed in previous constitutional justice cases, never disappears²⁰. Thus, having originated as the interpretation of the Constitution in its narrow sense, the constitutional doctrine with time becomes better developed not only on the basis of the original text of the Constitution alone, but also on its own basis. The saying “grows like coral”, or layer by layer, perfectly fits to describe the process of the development of the constitutional doctrine. As new constitutional doctrinal provisions are formulated, the diversity as well as completeness of the legal regulation consolidated in the Constitution is disclosed²¹. As famously noted by Charles Evans Hughes, “we are under a Constitution, but the Constitution is what the judges say it is”, that is as much as there is the constitutional doctrine.

As an example of gradual development of the constitutional doctrine, one can refer to the constitutional requirements for the calling of referendums. In one of its first rulings the Constitutional Court noted that the Parliament’s duty to call a referendum could not be subject to any additional conditions or decisions, which are not indicated in the Constitution²². Otherwise, allegedly the supreme sovereign power of the Nation would be limited. Subsequently, elaborating on this doctrine twenty years later, in its ruling of 11 July 2014, the Constitutional Court held that the statements from the ruling of 22 July 1994 may not be interpreted without taking account of other provisions of the Constitution, as well as of the entire official constitutional doctrinal context and its development. It was emphasised that the requirement that the Constitution must be observed when referendums are called may not be regarded as an additional condition, which is not provided for in the Constitution. The Constitution is equally binding on the civil Nation itself. Therefore, the provisions of the Constitution may not be interpreted to mean that the Nation may, by referendum, establish any legal regulation it requests, including a legal regulation not complying with the requirements stemming from the Constitution (including the substantive limitations on constitutional amendments). Accordingly, the Constitutional Court held that the imperative derives from the principle of the supremacy of the Constitution not to put to a referendum any such possible decisions that would not be in line with the procedural or substantive

²⁰ E.g., see the ruling of 28 March 2006 of the Constitutional Court.

²¹ *Ibid.*

²² The ruling of 22 July 1994 of the Constitutional Court.

requirements inherent in the Constitution, even if these requirements are not consolidated *expressis verbis*. In addition, the Constitutional Court emphasised the importance to consolidate by law the requirements stemming from the Constitution for the content and form of an issue submitted to a referendum, including the requirement that issues submitted to a referendum must be formulated in a clear and not misleading manner, also that they may not include several unrelated questions or provisions, etc.

Principle of consistent development. One can emphasise that consistency is an essential feature of the constitutional jurisprudence in a consolidated democracy. It is important to emphasise that the binding nature of the constitutional doctrine means that it is binding on the Constitutional Court itself. More than once the Constitutional Court held that the legal position of the Constitutional Court (*ratio decidendi*) in constitutional justice cases has the significance of the precedent²³: the Constitutional Court must follow the existing precedents and the constitutional doctrine so as to ensure the continuity of the constitutional jurisprudence (its consistency and non-discrepancy), as well as the predictability of its decisions²⁴.

Thus, though the correction of the constitutional doctrine is an exclusive competence of the Constitutional Court, in order to ensure legal certainty, the Constitutional Court has formulated the self-restraining doctrine in this respect. The prerogative of the Constitutional Court to reinterpret (or correct) the constitutional doctrine is reserved only for exceptional cases when it is objectively inevitable. Such a constitutional necessity may be determined by the need to enhance the protection of human rights and other values enshrined in the Constitution, or the need to expand the possibilities of constitutional control in order to guarantee constitutional justice. Therefore, it would be constitutionally unjustified to correct the constitutional doctrine where such a correction would change the system of values entrenched in the Constitution or would deny its inner unity, reduce the guarantees of the protection of the supremacy of the Constitution in the legal system, undermine the guarantees of constitutional human rights and freedoms, or change the model of the separation of powers enshrined in the Constitution²⁵.

It can be recalled that the Constitutional Court is a legal and not a political institution, whose case law must be foreseeable. Thus, no correction of the official constitutional doctrine may be determined by accidental (from the perspective of law) factors, such as, for example, a mere change in the composition of the Constitutional Court or political expediency, or public opinion. Otherwise, a threat would arise to the stability of the official constitutional doctrine and the Constitution itself. It should also be mentioned that consistency in the development of the constitutional doctrine and judicial self-restraint with regard to corrections of the constitutional doctrine helps to ensure that the interpretation of the Constitution, as well as decisions based on it, will not be arbitrary or based on individual attitudes, emotions, or purely political reasons, including the change of political power. Strict adherence to the principle of consistency serves as a safeguard against attempts of political pressure aimed at the Constitutional Court.

²³ E.g., see ruling of the 22 October 2007 of the Constitutional Court.

²⁴ E.g., see the ruling of 28 March 2006, the decisions of 21 November 2006 and 13 March 2013 of the Constitutional Court.

²⁵ E.g., see, the rulings of 28 March 2006 and 5 September 2012 of the Constitutional Court.

Among the few examples of the correction of the official constitutional doctrine, the case law related to the interpretation of the principle of the equality of all persons before the law can be mentioned. In one of its first rulings (the ruling of 8 November 1993) the Constitutional Court took a purely formal approach based solely on the literal text of the Constitution and held that this principle is applicable only to natural persons. The Constitutional Court reasoned that Article 29 of the Constitution, where this principle is established, belongs to Chapter II of the Constitution, which is entitled as “The Human Being and the State”; therefore, the notion of “a person” in this context allegedly can only be a synonym of “a human being”. This position was corrected two and a half years later, in the ruling of 28 February 1996, where the Constitutional Court based its argumentation on the overall constitutional regulation: the principle of the equality of all persons before the law is closely interrelated with other constitutional principles and provisions, including the principle of the rule of law; this principle should be applied not only to natural persons but also to legal persons. This corrected concept of persons as subjects of the principle of equality entailed the possibility to defend the rights of legal persons in cases where they are faced with discriminative treatment.

Inadmissibility of interpretation of the Constitution based on lower-ranking legal acts.

This principle of the development of the constitutional doctrine is related to the constitution-centric concept of the Lithuanian legal system, determining that the Constitution is a supreme law without gaps, to which all legal acts should comply. Therefore, the interpretation of the Constitution must be based on the logic of the Constitution itself, on the interrelations between its norms and principles, and not on the laws or other lower-ranking legal acts²⁶. From the viewpoint of constitutional law, it is not the Constitution that must be interpreted on the grounds of laws, but laws must be interpreted on the grounds of the Constitution. Only if doing so, it is possible to assess laws from the perspective of the Constitution as the apex of the legal system²⁷. Therefore, usually only the text of the Constitution and the previous acts of the Constitutional Court can be applied as the sources for the interpretation of the Constitution.

Harmonisation with international and the European Union law. However, the latter rule has one important exception. It is the sources of international and the EU law, as well as, to some extent, the jurisprudence of foreign constitutional courts.

Although the Constitution is a supreme law²⁸, to which international and the EU law should comply, both international law and the EU law cannot be treated in the same way as national legal acts, as international and European legal rules are of different origin (they are accepted by the State of Lithuania together with other actors of international or European integration). Therefore, though theoretically having lower rank than the Constitution, both international and the EU law can serve as the source for the interpretation of the Constitution.

The basis to rely on international and the EU law is provided by the Constitution itself. I think in all the constitutions we can find the similar fundamental principles, according to which the Constitution, on the one side, and international and the EU law (provided that the state concerned is a member of the EU or seeks the membership or association), on the other side,

²⁶ E.g., see the ruling of 12 July 2001 of the Constitutional Court.

²⁷ Sinkevičius, V. Konstitucijos interpretavimo principai ir ribos. *Jurisprudencija*, 2005, No. 67(59), p. 7–19.

²⁸ Para. 1 of Art. 7 of the Constitution: “Any law or other act that contradicts the Constitution shall be invalid”.

must be presumed as compatible and must be interpreted in harmony. It is a particular responsibility of the constitutional courts to find these principles and, relying on them, to define the place and the role of international (and the EU) law in the national constitutional framework.

As regards Lithuania, from the jurisprudence of the Constitutional Court we can see the following relevant constitutional principles: 1) the respect for international obligations (*pacta sunt servanda*)²⁹, in accordance to which the State of Lithuania has to carry out the international obligations arising out of treaties and customary international law³⁰; 2) the rule of law³¹, which includes both the principle of the supremacy of the Constitution and the principle of the respect for international law; therefore, under the rule of law, the supremacy of the constitution has to be reconciled with the respect for international (and the EU) law³²; 3) an open civil society³³, in accordance to which the State and society should be open to international community and its law³⁴; 4) the geopolitical orientation of the State, in accordance to which the State of Lithuania has to be committed to the common values of the Western democracies and to fulfil the obligations arising out of the membership in the EU and NATO³⁵. Taken together, all these principles serve as bridges between the Constitution, on the one side, and international and the EU law, on the other side. As a consequence, they lead to the openness of the Constitution to international and the EU law, which results in the duty of the Constitutional Court of consistent interpretation.

The duty of consistent interpretation obliges the Constitutional Court to see the Constitution in the broader international and, in particular, European context, to harmonise the interpretation of constitutional provisions with the relevant international and European rules, i.e. to take international and the EU law as a source of inspiration for the development of the official constitutional doctrine. For example, in the decision of 20 December 2017 the Constitutional Court stated that there is no constitutional ground to interpret the issues of internal market and competition in a different way than they are regulated by the EU law. The duty of consistent interpretation was expressly stated in the already mentioned ruling of 28 September 2011 on the State Family Policy Concept, where the Constitutional Court emphasised that the constitutional concept of family must also be interpreted by taking into account Art. 8 of the European Convention on Human Rights (the respect for family life) and the relevant case law of the European Court of Human Rights, according to which the concept of family is not limited solely to a family based on marriage and has to include other types of the relationship of living together.

The latter case is also remarkable for its reliance on the jurisprudence of foreign constitutional courts: after a short overview of the relevant jurisprudence of the Czech, Slovenian, Croatian and German constitutional courts, the Constitutional Court of Lithuania in a similar manner

²⁹ Para. 1 of Art. 135 of the Constitution, which establishes the duty of the State of Lithuania to follow the generally recognised norms and principles of international law.

³⁰ E.g., the rulings of 24 January 2014 and 18 March 2014 of the Constitutional Court.

³¹ Preamble of the Constitution, according to which the Lithuanian people strive for a State under the rule of law.

³² The rulings of 24 January 2014 and 18 March 2014 of the Constitutional Court.

³³ Preamble of the Constitution, according to which the Lithuanian people strive for an open, just, and harmonious civil society.

³⁴ E.g., the rulings of 9 December 1998 and 18 March 2014 of the Constitutional Court.

³⁵ E.g., the rulings of 7 July 2011, 24 January 2014 and 11 July 2014 of the Constitutional Court.

defined the constitutional concept of family, which is based on the content rather than the form of relations and includes mutual responsibility between family members, understanding, emotional affection, assistance and similar bonds as well as the voluntary determination to take on certain rights and duties. Indeed, once under the Constitution Lithuania is striving for an open civil society, there is no constitutional ground to ignore the most progressive practice of foreign constitutional courts as a source for the interpretation of similar constitutional provisions.

It is worth to note that the inconsistency between the Constitution and international (or the EU) law is considered to be an anomaly that has to be removed either by the corresponding amendment of the Constitution or the denunciation of the international obligations that are in conflict with the Constitution³⁶. However, in case of human rights obligations, the only solution is to amend the Constitution³⁷, as another option would be hardly consistent with the constitutional principles of an open civil society and the geopolitical orientation of the State.

Application of different methods of the interpretation of the Constitution. The Constitutional Court has more than once noted that the nature of the Constitution as an integral act, which provides the guidelines for the entire legal system, determines that the Constitution may not be interpreted purely literally (that is, by applying the sole linguistic (verbal) method). When interpreting the Constitution, various methods of legal interpretation must be applied, including systemic, logical, teleological, historical, comparative, and other methods³⁸; the Constitution has to be understood not only according to its letter, but in the light of its spirit as well.

One significant case I can mention as an example of the application of different methods of the interpretation of the Constitution. It is the case regarding constitutionality of the death penalty, which was considered in 1998³⁹. In terms of the purely formal point of view, the Constitutional Court could decide that the Constitution was silent about and therefore did not prohibit the death penalty, as there is no mention of it in the text of the Constitution at all; moreover, at that time Lithuania was not yet a party to Protocol No. 6 to the European Convention on Human Rights concerning the abolition of the death penalty. However, the Constitutional Court, as it is clear from its reasoning, adopted an approach based on the respect for innate human rights and openness to trends of humanisation of international law. The Constitutional Court noted from the outset that, in deciding on the constitutionality of death penalty, regard should be paid to the fact that the Constitution is an integral act, consolidating the protection of human life in a number of its provisions. According to the Constitutional Court, it was also important to assess the relevant trends in the attitude of the international community regarding the death penalty, the international obligations of the State of Lithuania, and the experience of the historical development of the State of Lithuania in establishing this punishment in criminal laws. Thus, it was held that the lawfulness of the death penalty had to be investigated taking into account various aspects.

Applying the historical method, the Constitutional Court overviewed the legal regulation concerning the death penalty starting from the 16th century Statutes of the Grand Duchy of

³⁶ The ruling of 18 March 2014 of the Constitutional Court.

³⁷ The ruling of 5 September 2012 of the Constitutional Court.

³⁸ E.g., see the ruling of 25 May 2004 of the Constitutional Court.

³⁹ The ruling of 9 December 1998 of the Constitutional Court.

Lithuania up to the present times and drew the conclusion that even the early legal regulation provided restrictions limiting the application of this punishment; and, at the beginning of the 20th century, following the creation of the modern Lithuanian state, the death penalty was regarded as inadmissible in the absence of extreme circumstances. In using the systemic method, the Constitutional Court paid special attention to the constitutional provisions consolidating the recognition of the innate nature of human rights, the right to life, and the prohibition of torture and cruel, inhuman or degrading treatment. The Constitutional Court noted that the death penalty ceases human life, and there is no possibility of rectifying a mistake if a person who does not deserve it is sentenced to death. Besides, it was held that the death penalty deprives the convict of human dignity, as the state in this case treats the person as a mere object that needs to be eliminated from the human community.

The systemic method also created the preconditions for the Constitutional Court to take account of the development of international standards with regard to human rights protection and, in particular, of the emergence of the European standard concerning the inadmissibility of the death penalty. In this respect the Constitutional Court invoked the striving for an open, just, and harmonious civil society and a state under the rule of law, as established in the Preamble to the Constitution, and drew on the constitutional provisions consolidating the obligation of Lithuania to follow international legal norms and principles. After considering the relevant international treaties and multiple *soft law* documents adopted by the United Nations General Assembly, the Council of Europe, and the European Parliament, the Constitutional Court came to the conclusion that the abolition of the death penalty was increasingly regarded in Europe as a universally recognised norm. Based on the comparative method, the Constitutional Court also pointed to the “evident trend” in criminal law of European states towards the humanisation of criminal punishments.

Thus, the application of the whole range of different methods of the interpretation of the Constitution enabled the Constitutional Court to provide the arguments supporting the conclusion on the unconstitutionality of the penalty, which, in the words of the Council of Europe, serves “no purpose in a civilised society governed by the rule of law and respect for human rights”⁴⁰.

3. The main features of human rights doctrine

The constitutional doctrine of human rights can serve as one of the excellent examples how the principles of the development of the implied powers of the Constitutional Court and the jurisprudential Constitution are applied. It is also the demonstration how the substantial concept of the rule of law influence the constitutional concept of human rights.

It is due the substantial concept of the rule of law, already in 1995 the Constitutional Court noted that „literal interpretation of human rights alone is not acceptable for the nature of the protection of human rights“⁴¹; more than one occasion the Constitutional Court has emphasised that the constitutional order is based on the priority of the rights and freedoms of a human being and a person, as the greatest value⁴². These provisions are the points of

⁴⁰ Abolition of the Death Penalty. Council of Europe website:
<http://www.coe.int/t/dghl/standardsetting/hrpolicy/Others_issues/Death_Penalty/default_en.asp>.

⁴¹ The conclusion of 24 January 1995 of the Constitutional Court.

⁴² E.g., the rulings of 23 November 1999 and 24 September 2009 of the Constitutional Court.

departure in the formulation of the further doctrine of human rights. In interpreting the constitutional provisions on human rights, the Constitutional Court has to take into account the overall constitutional regulation, including the relevant explicit and implicit provisions and principles as well as the constitutional values. In other words, the Constitutional Court is guided not only by the letter of the Constitution but also by its spirit. Also it uses all the available powers to protect human rights as the greatest constitutional value.

Here it is not possible to make the detailed overview of the whole constitutional human rights doctrine. However, we can find the following characteristic features of this doctrine: 1) the recognition of irrevocability of innate human rights; 2) vertical and horizontal protection of human rights; 3) negative and positive obligations of the State in the field of human rights; 4) the criteria for the restriction of certain human rights; 5) international and the EU law as the constitutional minimum standard for human rights protection.

Irrevocability of innate human rights. The Constitution explicitly states about the recognition of innate nature of human rights⁴³. According to the Constitutional Court, the nature of human rights itself is the primary source of the innate human rights and freedoms⁴⁴.

Already in 1998, the Constitutional Court attempted to define innate human rights in the following manner: the innate nature of human rights means that they are inseparable from an individual and are linked with neither a territory nor a nation; an individual possesses his/her innate rights regardless of whether they are entrenched in the legal acts of the state or not; every individual has these rights, and this means that the best and worst people have them; innate human rights are an individual's innate opportunities that ensure his/her human dignity in the spheres of social life; they constitute that minimum, that starting point from which all other rights are developed and supplemented, and which constitute the values unquestionably recognised by the international community⁴⁵.

The concept of the innate nature of human rights and freedoms was continued in 2004⁴⁶. In this ruling it was held that the concrete innate human rights and freedoms are not specified in Art. 18 of the Constitution, which states about the recognition of innate nature of human rights. These rights and freedoms are consolidated in other articles of the Constitution. Innate nature of human rights and freedoms means that an individual has the rights and freedoms that are inseparable from his/her person and may not be taken from him/her, as well as that an individual has them *ipso facto*. The constitutional recognition of the innate nature of human rights and freedoms implies that it is not allowed to establish such a procedure for implementing these rights and freedoms that would make their implementation dependent on decisions adopted by state institutions, officials, or other persons in cases where such decisions are lacking any foundation in law.

By its ruling of 19 August 2006, the Constitutional Court emphasised that the Constitution is an anti-majoritarian act; it protects the individual.

⁴³ Art. 18 of the Constitution: "Human rights and freedoms shall be innate".

⁴⁴ The ruling of 20 November 1996 of the Constitutional Court.

⁴⁵ The rulings of 9 December 1998 of the Constitutional Court; the same provisions were repeated in the rulings of 29 December 2004, 19 August 2006, 2 September 2009 and 16 May 2013.

⁴⁶ The ruling of 29 December 2004 of the Constitutional Court.

Thus, it was natural that, gradually and consistently developing the human rights doctrine, the Constitutional Court clearly stated about the irrevocability of innate human rights by any means, including the ordinary legislation, constitutional amendments and decisions of referendums.

In 2012 and 2014 the Constitutional Court had the opportunity to interpret the fundamentals of the Constitution and held that innate nature of human rights and freedoms, as well as democracy and independence of the State, are the supreme constitutional values that cannot be denied in any circumstances⁴⁷. They constitute the foundation for the Constitution, as the social contract, as well as the foundation for the nation's common life, which is based on the Constitution, and for the State of Lithuania itself. Their denying would amount to the denial of the essence of the Constitution itself; with the denying of these rights, the identity of our nation as a political collective entity, embodied in the Constitution would collapse. Thus, no one has and cannot have the power to eliminate innate human rights deriving from the natural human dignity. The protection of these rights has become a particular metanorm, the so called eternity clause, though this is not expressly stated in the text of the Constitution.

It is only logical, that due to this reason, the Constitutional Court held that it is not permitted to adopt any such constitutional amendments that would destroy the innate nature of human rights and freedoms⁴⁸. As well, the Constitutional Court stated about its implied powers to declare null and void any legislation that would grossly violate innate human rights⁴⁹.

In this context it is worth to note that the similar approach has been taken by the Taiwanese Constitutional Court: as pronounced by this Court, constitutional amendments shall be deemed improper, insofar as they deny „the most critical and fundamental tenets of the Constitution as a whole“; the fundamental rights of the people and their protection under the Constitution are one of some of the most critical and fundamental tenets of the Constitution as a whole⁵⁰.

Vertical and horizontal protection of human rights. As mentioned, the Constitution is perceived as an anti-majoritarian act; it protects the individual. Therefore, according to the Constitution, the State is constitutionally obliged to ensure the protection of human rights and freedoms from any unlawful attempt or limitation by legal, material or organisational means and to establish sufficient means for the defence and protection of human rights and

⁴⁷ The decision of 19 December 2012 and the rulings of 24 January 2014 and 11 July 2014 of the Constitutional Court.

⁴⁸ The ruling of 11 July 2014 of the Constitutional Court.

⁴⁹ The decision of 19 December 2012 of the Constitutional Court.

⁵⁰ The Taiwanese Constitutional Court stated that „although the Amendment to the Constitution has equal status with the constitutional provisions, any amendment that alters the existing constitutional provisions concerning the fundamental nature of governing norms and order and, hence, the foundation of the Constitution's very existence destroys the integrity and fabric of the Constitution itself. As a result, such an amendment shall be deemed improper. Among the constitutional provisions, such principles as those establishing a democratic republic under Article 1, sovereignty of and by the people under Article 2, protection of the fundamental rights of the people under Chapter Two as well as the check and balance of governmental powers are some of the most critical and fundamental tenets of the Constitution as a whole. The democratic constitutional process derived from these principles forms the foundation for the existence of the current Constitution and all [governmental] bodies installed hereunder must abide by this process“. Interpretation of the Judicial Yuan No. 499 of 2000/3/24, <https://www.judicial.gov.tw/constitutionalcourt/EN/p03_01.asp?expno=499>.

freedoms⁵¹. Then it is logical that under the Constitution the State has the obligation to ensure that human rights are not violated not only by state institutions or officials themselves, but also by other persons, i.e. obligation to ensure not only vertical, but also horizontal protection of human rights⁵².

Negative and positive obligations of the State in the field of human rights. One of the preconditions for ensuring human dignity as constitutional value is the duty of the legislator to guarantee the proper protection of human rights and freedoms⁵³. Therefore the State may have not only negative, but also positive obligations in the field of human rights.

This is well reflected in the widespread doctrine on social rights and their protection, as revealed by the Constitutional Court. According to it, under the Constitution, the State of Lithuania is socially oriented. The social orientation of the State is reflected in various provisions of the Constitution, including those on economic, social and cultural rights⁵⁴. The Constitutional Court also explained that a socially oriented state is under the constitutional obligation to assume the burden of the fulfilling of certain obligations, i.e. it has the positive obligations to promote social security and welfare. The principle of social solidarity entrenched in the Constitution implies that the State has to ensure that the burden of the fulfilment of certain obligations should also be distributed to a certain extent among the members of society. However, such distribution should be constitutionally reasoned, it cannot be disproportionate, it cannot deny the social orientation of the state and the obligations to the State that arise from the Constitution⁵⁵.

The Constitutional Court has formulated in its acts, for example, an extensive official constitutional doctrine of social security, *inter alia*, social assistance, and has identified the constitutional imperatives that should be heeded in the respective legal regulation. According to the Constitutional Court, the State has the positive obligation to create such a system of social maintenance that would enable one to maintain the living conditions in line with the dignity of a person, and, in case of need, it would render the necessary social assistance for the person⁵⁶.

The criteria for the restriction of certain human rights. In its ruling of 29 December 2004 the Constitutional Court held that the recognition of the innate nature of human rights and freedoms does not deny the fact that the implementation of human rights and freedoms may be subject to limitation. According to the Constitution, it is allowed to limit the implementation of human rights and freedoms if the following conditions are complied with: 1) the limitations are established by means of a law (statutory law); 2) the limitations are necessary in a democratic society in order to protect the rights and freedoms of other persons and the values consolidated in the Constitution, as well as constitutionally important objectives; 3) the limitations do not deny the nature or essence of the rights or freedoms; and 4) the constitutional principle of proportionality is observed⁵⁷. These criteria are essentially

⁵¹ E.g., the rulings of 30 June 2000 and 29 December 2004 of the Constitutional Court.

⁵² The ruling of 19 August 2006 of the Constitutional Court.

⁵³ The ruling of 29 December 2004 of the Constitutional Court.

⁵⁴ E.g., the rulings of 5 March 2004, 6 February 2012 and 26 May 2015 of the Constitutional Court.

⁵⁵ E.g., the rulings of 7 June 2007, 1 July 2013 and 26 May 2015 of the Constitutional Court.

⁵⁶ The rulings of 26 September 2007, 3 July 2014 and 26 May 2015 of the Constitutional Court.

⁵⁷ It can resemble to Art. 23 of the Constitution of Taiwan, according to which, "all the freedoms and rights enumerated in the preceding Articles shall not be restricted by law except such as may be necessary to prevent

identical to those provided by the European Convention on Human Rights (and the European Court of Human Rights) for the limitation of certain conventional rights. Like under the Convention, certain rights, such as the right to life and the prohibition of torture or slavery, are absolute and can not be restricted in any circumstances. Denying of these rights would amount to rejecting the innate nature of human rights and would essentially compromise the dignity of the person, treating the person as an object, and not as a goal.

In developing the doctrine on the limitation of human rights and freedoms in its subsequent acts, the Constitutional Court held that the constitutional principle of proportionality, as one of the elements of the constitutional principle of a state under the rule of law, also means that the measures provided for by law must be in line with legitimate objectives important to society, that these measures must be necessary in order to reach the said objectives, and that these measures must not restrict the rights or freedoms of a person clearly more than necessary in order to reach the said objectives⁵⁸. In the ruling of 7 July 2011 the Constitutional Court held that the requirement of the constitutional principle of proportionality not to limit, by means of a law, the rights and freedoms of a person more than necessary in order to reach legitimate objectives that are important to society, *inter alia*, implies the requirement for the legislature to establish the legal regulation that would create the preconditions for the sufficient individualisation of the limitations on the rights and freedoms of a person: the legal regulation limiting the rights and freedoms of a person, as provided for in a law, must be such that would create the preconditions for assessing, to the extent possible, the individual situation of each person and, in view of all important circumstances, for individualising as appropriate the specific measures that are applicable to and limit the rights of that person.

A good example of the well established practice of the Constitutional Court is the doctrine of restricting human rights, in particular the applicability of the principle of proportionality, in the context of the economic crisis. The economic crisis which was experienced in Lithuania in 2009–2010 resulted in the major challenge to the Constitutional Court of balancing, in a fair manner, competing constitutional values – social guarantees (individual social rights), on the one hand, and the need to cope with a significant budget deficit (the public interest of fiscal stability), on the other hand. In other words, Constitutional Court faced the problematic issue of how to reconcile the inevitable anti-crisis (austerity) measures and the requirements of the rule of law, since these measures usually affect the level of guaranteeing social and economic rights and, to a certain extent, require derogations from such legal principles as legal certainty and equal rights⁵⁹.

International and the EU law as the constitutional minimum standard for human rights protection. As mentioned, international and the EU law, as well as, to certain extent, the jurisprudence of foreign constitutional courts, has to be also regarded as the sources for the interpretation of the Constitution. Otherwise, the State and society could find itself in

infringement upon the freedoms of other persons, to avert an imminent crisis, to maintain social order or to advance public welfare“.

⁵⁸ The ruling of 11 December 2009 of the Constitutional Court.

⁵⁹ 4th Congress of the World Conference on Constitutional Justice, Vilnius, Republic of Lithuania, 11-14 September 2017 “The Rule of Law and Constitutional Justice in the Modern World”. Session 2 „New Challenges to the Rule of Law. Key-note speech by Mr Dainius ŽALIMAS, President, Constitutional Court, Republic of Lithuania,

http://www.venice.coe.int/WCCJ/04_Vilnius/Presentations/WCCJ-4thCongress-session2-key-note-Zalimas-e.pdf.

self-isolation, i.e. the situation that would not be compatible with the principles of an open civil society and the respect to international obligations, as well as, ultimately, with the requirements of the rule of law.

That is why it is logical to perceive international and the EU law as the constitutional minimum standard for the human rights protection⁶⁰: if under the Constitution the State is obliged to follow the generally recognised norms and principles in its international relations, then there is no constitutional ground to apply the less favourable standards for its own people. Therefore, as a consequence, once it is established that the law provides for the less favourable standard of human rights protection than that established by international (or the EU) law (e.g., the European Convention on Human Rights), it is the basis to declare this law unconstitutional. For example, on this basis the Constitutional Court declared unconstitutional the provision that allowed to apply retroactively the part of the definition of genocide under national Criminal Code, which was broader than that established by the 1948 Genocide Convention (it included also the genocide of political and social groups).

However, this rule can have an important exception: the Constitution can establish the higher standard for the human rights protection than that provided by international (or the EU) law (e.g., in the field of social and economic rights).

Conclusion

The overview of the development of the constitutional review and the protection of human rights by the Constitutional Court of the Republic of Lithuania demonstrates what principles should be followed in order to carry out successfully the mission, assigned to any constitutional court, i.e. to ensure the supremacy of the Constitution, including the human rights protection, and, ultimately, the rule of law.

First of all, it is up to the Constitutional Court to find all the necessary means within the constitutional framework for the efficient pursuance of this mission, i.e. to find in the Constitution the necessary (implied) powers that would allow protecting the constitutional order without compromises at the expense of the Constitution and the rule of law. In particular, the Constitutional Court can and must ensure that no legal act is immune from the constitutional review and that the prohibition of the overruling of the decision of the Constitutional Court is observed. For this purpose, when necessary, in interpreting the Constitution, the Constitutional Court can reveal its own implied powers that can be justified by the mission of the Constitutional Court, including the powers to assume the jurisdiction over the acts not expressly mentioned in the text of the Constitution and the power to declare null and void all the consequences of anti-constitutional acts detrimental to the foundations of the constitutional order.

Secondly, it is up to the Constitutional Court to develop the jurisprudential Constitution, i.e. the official constitutional doctrine, which ensures both the stability and dynamism of the constitutional order, as well as the independent functioning of the Court. In this respect, the development of the jurisprudential Constitution can be successful, provided that it is based on the principles of gradual and consistent development, the inadmissibility to interpret the

⁶⁰ The rulings of 9 December 1998 and 18 March 2014 of the Constitutional Court.

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Constitution on the basis of lower-ranking acts, the harmonisation with international (and the EU) law, application of all available methods for the interpretation of the Constitution. Then the development of the jurisprudential Constitution is capable of building the real constitution-centric national legal system, where the Constitution is perceived as a supreme law without gaps, to which all other acts must comply; at the same time, under this system, the Constitution is open to the progressive development of international (and the EU) law, it is also perceived as a living Constitution, constituting not only of its letter, but also having its spirit.

The principles of the evolution of the powers and the development of the jurisprudential Constitution are also applied in the formation of the human rights doctrine by the Constitutional Court. Here, guided by the substantial concept of the rule of law, the Constitutional Court first of all can take all available means to protect innate human rights, in particular human dignity. Under any constitution, even in the absence of the express provisions, the constitutional court can find irrevocable values (including human dignity) that cannot be denied by no one and by any means. Secondly, these values are also protected by international law; here the Constitutional Court can and must consider the respective international rules as a minimum constitutional standard.

To sum it up, all of these principles reflect the language common to the constitutional courts around the world. This is the language of the rule of law as a universal concept that unites us in performing our mission. This language also helps us to maintain the same direction of the river under the changing challenges to the rule of law.

The development of the constitutional review, including the protection of human rights, leads us to the continuous disclosure of new elements of the constitutional reality and the further development of the already existing ones, as well as the harmony between the spirit and the letter of the Constitution. It is gradual, consistent, ongoing and never-ceasing process. The peaceful and progressive development of our societies should also follow the same path.

Let me express my sincere gratitude for your kind invitation to be a speaker in this Conference. Thank you very much for your attention!